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THE
COMPILED LAWS
OF THE
TERRITORY OF UTAH,

THE LEHIGH UNIVERSITY,
[illegible] 1885
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CONTAINING ALL THE

541
368

GENERAL STATUTES NOW IN FORCE,

TO WHICH IS PREFIXED

THE DECLARATION OF INDEPENDENCE,

CONSTITUTION OF THE UNITED STATES, ORGANIC ACT OF UTAH,

AND

LAWS OF CONGRESS ESPECIALLY APPLICABLE TO THIS TERRITORY.

COMPILED AND PUBLISHED

BY AUTHORITY.

PRINTED AT THE DESERET NEWS STEAM PRINTING ESTABLISHMENT,
SALT LAKE CITY, UTAH.
1876.

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PREFACE.

THIS Compilation has been made by virtue of the following authority:

AN ACT TO PROVIDE FOR THE COMPILATION AND PUBLICATION OF THE LAWS OF THE TERRITORY OF UTAH.

SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That Abraham O. Smoot, Silas S. Smith, and Robert T. Burton be, and the same are hereby appointed a committee to arrange for, and supervise the compilation and publication of all the Acts and Resolutions passed by the Governor and Legislative Assembly of the Territory of Utah, now in force, including those passed during this twenty-second session, together with the Declaration of Independence, Constitution of the United States with amendments thereto, the Organic Act of this Territory, and such other laws of the United States as the committee may deem specially applicable to this Territory; and publish the same in suitable form, substantially bound, with marginal notes and intelligible index, not exceeding three thousand copies. The printing and binding of said work shall be let by said committee to the lowest responsible bidder.

SEC. 2. Said books, when completed, shall be placed by said committee, in the hands of the Auditor of Public Accounts, to be by him distributed to the Governor, Secretary and Judges of the Supreme Court of this Territory, members of the present Legislative Assembly and Territorial officers, one copy each; and that the Auditor retain two hundred (200) copies for the use of future Legislative Assemblies, and place the residue of said books in the hands of the Territorial Treasurer, to be sold by him, to County officers of this Territory at the rate of three dollars each; and to all other persons at such rate as said committe shall direct, and place the proceeds thereof in the Territorial treasury.

SEC. 3. That the sum of six thousand dollars, or so much thereof as may be necessary, be, and the same is hereby appropriated, to be drawn on the order of said committee, to defray the expense of compilation and publication.

LORENZO SNOW, *President of the Council,*
ORSON PRATT, *Speaker of the House,*

Approved February 18th, 1876.

GEORGE W. EMERY, *Governor,*

TERRITORY OF UTAH, } ss.
Secretary's Office. }

I, MOSES M. BANE, Secretary of the Territory of Utah, do hereby certify that I have carefully compared the foregoing law and find it to be a true and correct copy of the original Law passed at the twenty-second session of the Legislative Assembly of the Territory of Utah, now on file in my office.

In testimony whereof I have hereto set my hand and affixed the great seal of the Territory of Utah.

Done at Salt Lake City, the 29th day of November, A. D. 1876.

[SEAL.] MOSES M. BANE, *Secretary of Utah Territory.*

In preparing this Compilation, the object kept prominently in view has been *the omission of no general law or part thereof, now in force.*

In every case of a general Statute, where it appeared that any well founded doubt could exist, as to its having been repealed, or superseded, it has been retained with such note, or reference, as the case seemed to require, leaving the question of its repeal to the judiciary.

As to the meaning of the words *now in force*, as employed in the Act providing for this Compilation, it has not occurred to the committee that there could be any question. The Legislature evidently intended the work to embrace such laws only as are in force for future action or purpose, and not such as possess vitality as respects alone the action heretofore had under them; hence the number of Acts has been considerably reduced by the consolidation of amendments and the omission of many Acts private in their nature, such as cañon roads, and other private incorporations not necessarily belonging to the general Statutes. The charters of incorporated cities have been consolidated in one title and classified in their respective counties.

In conformity with the practice prevailing in many of the States, the various Acts have been classified and arranged in their relative order under Titles and Chapters, with head-notes giving the subject of each section, and the sections numbered consecutively through the whole work, for the convenience of future reference or amendments.

The duty of the committee has been confined to the collection and reprint, *without alteration*, of the "Laws in force," consequently many crude things will be found in this compilation which will be more apparent in their present form than when distributed through the several books heretofore published.

The proof sheets as they passed through the press have been carefully inspected by the committee, and, while we can hardly hope that no errors have occurred, there are at least none which the utmost care on our part has not been exerted to prevent.

ABRAHAM O. SMOOT,
SILAS S. SMITH,
ROBERT T. BURTON,
Committee on Compilation.

NOVEMBER 28th, 1876.

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DECLARATION OF INDEPENDENCE.

Unanimously Passed by the Congress of the Thirteen United States of America, July 4th, 1776.

When, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident—that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness. That, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that, whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes; and, accordingly, all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But, when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these colonies, and such is now the necessity which constrains them to alter their former systems of government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having, in direct object, the establishment of an absolute tyranny over these States. To prove this, let facts be submitted to a candid world:

He has refused his assent to laws the most wholesome and necessary to the public good.

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained; and, when so suspended, he has utterly neglected to attend to them.

He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature—a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly, for opposing, with manly firmness, his invasions on the rights of the people.

He has refused, for a long time after such dissolutions, to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise; the State remaining, in the meantime, exposed to all the danger of invasion from without, and convulsions within.

He has endeavored to prevent the population of these States; for that purpose, obstructing the laws for naturalization of foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers to harass our people, and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our legislature.

He has affected to render the military independent of, and superior to, the civil power.

He has combined, with others, to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his assent to their acts of pretended legislation:

For quartering large bodies of armed troops among us:

For protecting them, by a mock trial, from punishment for any murders which they should commit on the inhabitants of these States:

For cutting off our trade with all parts of the world:

For imposing taxes on us without our consent:

For depriving us, in many cases, of the benefits of trial by jury:

For transporting us beyond seas to be tried for pretended offenses:

For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies:

For taking away our charters, abolishing our most valuable laws, and altering, fundamentally, the powers of our governments:

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here, by declaring us out of his protection, and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is, at this time, transporting large armies of foreign mercenaries to complete the works of death, desolation, and tyranny, already begun, with circumstances of cruelty and perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers, the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions.

In every stage of these oppressions, we have petitioned for redress, in the most humble terms; our repeated petitions have been answered only by repeated injury. A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in attention to our British brethren. We have warned them, from time to time, of attempts made by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them, by the ties of our common kindred, to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They, too, have been deaf to the voice of justice and consanguinity. We must, therefore, acquiesce in the necessity, which denounces our separation, and hold them, as we hold the rest of mankind, enemies in war, in peace, friends.

We, therefore, the representatives of the UNITED STATES of AMERICA, in GENERAL CONGRESS assembled, appealing to the Supreme Judge of the World for the rectitude of our intentions, do, in the name, and by the authority of the good people of these colonies, solemnly publish and declare, That these United Colonies are, and of right ought to be, FREE AND INDEPENDENT STATES; that they are absolved from all allegiance to the British crown, and that all political connexion between them and the state of Great Britain is, and ought to be, totally dissolved; and that, as FREE AND INDEPENDENT STATES, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which INDEPENDENT STATES may of right do. And, for the support of this declaration, with a firm reliance on the protection of DIVINE PROVIDENCE, we mutually pledge to each other, our lives, our fortunes, and our sacred honor.

JOHN HANCOCK.

New Hampshire.
Josiah Bartlett,
William Whipple,
Matthew Thornton.

Massachusetts Bay.
Samuel Adams,
John Adams,
Robert Treat Paine,
Elbridge Gerry.

Rhode Island.
Stephen Hopkins,
William Ellery.

Connecticut.
Roger Sherman,
Samuel Huntington,
William Williams,
Oliver Wolcott.

New York.
William Floyd,
Philip Livingston,
Francis Lewis,
Lewis Morris.

New Jersey.
Richard Stockton,
John Witherspoon,
Francis Hopkinson,
John Hart,
Abraham Clark.

Pennsylvania.
Robert Morris,
Benjamin Rush,
Benjamin Franklin,
John Morton,
George Clymer,
James Smith,
George Taylor,
James Wilson,
George Ross.

Delaware.
Cæsar Rodney,
George Read,
Thomas McKean.

Maryland.
Samuel Chase,
William Paca,
Thomas Stone,
Charles Carroll, of Carrollton.

Virginia.
George Wythe,
Richard Henry Lee,
Thomas Jefferson,
Benjamin Harrison,
Thomas Nelson, Jr.,
Francis Lightfoot Lee,
Carter Braxton.

North Carolina.
William Hooper,
Joseph Hews,
John Penn.

South Carolina.
Edward Rutledge,
Thomas Heyward, Jr.,
Thomas Lynch, Jr.,
Arthur Middleton.

Georgia.
Button Gwinnett,
Lyman Hall,
George Walton.

CONSTITUTION

OF THE

UNITED STATES.

PREAMBLE.

WE, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution of the United States of America. Preamble.

ARTICLE I.

OF THE LEGISLATURE.

SECTION I.

1. All legislative powers herein granted, shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives. Legislative powers.

SECTION II.

1. The House of Representatives shall be composed of members chosen every second year by the people of the several States; and the electors in each State shall have the qualification requisite for electors of the most numerous branch of the State Legislature. House of Representatives and qualifications of electors.

2. No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen. Of Representatives.

Apportionment of representatives; ratio of representation; first apportionment.

3. Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each State shall have at least one representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three; Massachusetts eight; Rhode Island and Providence Plantations one; Connecticut five; New York six; New Jersey four; Pennsylvania eight; Delaware one; Maryland six; Virginia ten; North Carolina five; South Carolina five; and Georgia three.

Vacancies.

4. When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.

Choice of officers.

5. The House of Representatives shall choose their Speaker and other officers, and shall have the sole power of impeachment.

SECTION III.

Senate; each Senator has one vote.

1. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six years; and each Senator shall have one vote.

Senators classed; when seats vacated and filled; vacancies and appointments

2. Immediately after they shall be assembled, in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year; of the second class, at the expiration of the fourth year; and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen, by resignation or otherwise, during the recess of the Legislature of any State, the Executive thereof may make temporary appointments until the next meeting of the Legislature, which shall then fill such vacancies.

Qualifications of Senators.

3. No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citi-

zen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

President of the Senate.

4. The Vice President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

Officers.

5. The Senate shall choose their other officers, and also a President *pro tempore*, in the absence of the Vice President, or when he shall exercise the office of President of the United States.

Impeachments.

6. The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

Extent of judgment.

7. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment according to law.

SECTION IV.

Elections, how regulated.

1. The times, places and manner, of holding elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the places of choosing Senators.

Meetings of Congress.

2. The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SECTION V.

Each house to judge of its members; quorum.

1. Each house shall be the judge of the elections, returns, and qualifications of its own members; and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each house may provide.

To determine its own rules.

2. Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

To keep and publish journal of proceedings.

3. Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house, on any question, shall at the desire of one-fifth of those present, be entered upon the journal.

Adjournment

4. Neither house during the session of Congress shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

SECTION VI.

Compensation; privilege.

1. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

Their disability to hold office.

2. No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office.

SECTION VII.

Revenue bills.

1. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments, as on other bills.

President to sign bill, etc.; proceedings on bills returned by President.

2. Every bill which shall have passed the House of Representaves and the Senate shall, before it become a law, be presented to the President of the United States; if he approve, he shall sign it; but if not, he shall return it with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by

two-thirds of that house, it shall become a law. But in all such cases, the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the President within ten days—Sundays excepted—after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

Joint resolutions, except for adjournment, to receive the same sanction as bills.

3. Every order, resolution or vote, to which the concurrence of the Senate and House of Representatives may be necessary—except on a question of adjournment—shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

SECTION VIII.

The Congress shall have power—

Powers of Congress to lay taxes.

1. To lay and collect taxes, duties, imposts, and excises; to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States;

Loans.

2. To borrow money on the credit of the United States;

Commerce.

3. To regulate commerce with foreign nations, and among the several States, and with the Indian tribes;

Naturalization.

4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcy throughout the United States;

Money.

5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

Counterfeiting.

6. To provide for the punishment of counterfeiting the securities and current coin of the United States;

Post-offices.

7. To establish post offices and post roads;

Science.

8. To promote the progress of science and useful arts, by securing for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries;

Tribunals.

9. To constitute tribunals inferior to the Supreme Court; to define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

War.

10. To declare war, grant letters of marque and re-

prisal, and make rules concerning captures on land and water;

Army.

11. To raise and support armies; but no appropriation of money to that use shall be for a longer term than two years;

Navy.

12. To provide and maintain a navy;

Land and naval forces.

13. To make rules for the government and regulation of the land and naval forces;

Militia.

14. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions;

Disciplining the militia.

15. To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress.

Exercise exclusive legislation in certain cases.

16. To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased, by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock yards, and other needful buildings; and

Laws necessary for the execution of their powers.

17. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.

SECTION IX.

Importation of certain persons not to be prohibited until after 1808.

1. The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

Writ of habeas corpus.

2. The privilege of the writ of *habeas corpus* shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

Attainder.

3. No bill of attainder, or *ex post facto* law, shall be passed.

4. No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken. Direct tax.

5. No tax or duty shall be laid on articles exported from any State. No preference shall be given by any regulation of commerce or revenue, to the ports of one State over those of another: nor shall vessels bound to or from one State be obliged to enter, clear, or pay duties in another. Of commerce from the States, &c.

6. No money shall be drawn from the Treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time. Of expenditures.

7. No title of nobility shall be granted by the United States, and no person holding any office of profit or trust under them shall, without the consent of the Congress, accept of any present, emolument, office or title, of any kind whatever, from any king, prince or foreign State. No title of nobility to be granted, &c.

SECTION X.

1. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts; or grant any title of nobility. Powers prohibited to the individual States.

2. No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the Treasury of the United States, and all such laws shall be subject to the revision and control of the Congress. No State shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay. Powers which the States can exercise only under the sanction of Congress.

ARTICLE II.

OF THE EXECUTIVE.

SECTION I.

Executive power.

1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term, be elected as follows:

Electors of President and Vice President.

2. Each State shall appoint, in such a manner as the Legislature thereof may direct, a number of electors equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

Meeting of the electors.

[*Annulled; see amendments, article 12.]

3. *The electors shall meet in their respective States, and vote by ballot for two persons of whom one at least shall be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose, by ballot, one of them for President; and if no person have a majority, then from the five highest on the list, the House shall, in like manner, choose the President. But, in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the

choice of the President, the person having the greatest number of votes of the electors shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them, by ballot, the Vice President.

Time of choosing electors.

4. The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

Qualifications for President.

5. No person except a natural born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of vacancy, Vice President to act.

6. In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may by law provide for the case of removal, death, resignation or inability, both of the President and Vice President, declaring what officer shall act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

Compensation of the President.

7. The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Oath of the President.

8. Before he enters on the execution of his office, he shall take the following oath or affirmation:

"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States."

SECTION II.

Powers of the President.

1. The President shall be Commander-in-Chief of the army and navy of the United States, and of the militia of the several States, when called into actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective

offices; and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

His power to make treaties, to appoint Ambassadors, Consuls, and other officers.

2. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate, and, by and with the advice and consent of the Senate, shall appoint Ambassadors, other public ministers, and Consuls, Judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the Congress may, by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

3. The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

SECTION III.

Duties of President.

1. He shall, from time to time, give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed; and shall commission all the officers of the United States.

SECTION IV.

Officers liable to impeachment.

1. The President, Vice President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

OF THE JUDICIARY.

SECTION I.

1. The Judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The Judges, both of the Supreme and inferior courts, shall hold their offices during good behavior; and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office. Judicial power.

SECTION II.

1. The judicial power shall extend to all cases in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States, between a State and citizens of another State, between citizens of different States, between citizens of the same state, claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens, or subjects. Extent of judicial power.

2. In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be party, the Supreme Court shall have original jurisdiction. In all other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make. Jurisdiction of Supreme Court.

3. The trial of all crimes, except in cases of impeachment, shall be by jury, and such trial shall be held in the State where the said crime shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed. Trial of crimes.

SECTION III.

Treason.

1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

Congress to declare its punishment.

2. The Congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

ARTICLE IV.

SECTION I.

Credit to be given in each State to the acts of other States.

1. Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may, by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

SECTION II.

Reciprocity of *citizens.*

1. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

Criminals to be delivered up.

2. A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the Executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

Persons held to service to be delivered up.

3. No person held to service or labor in one State under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered up on claim of the party to whom such service or labor may be due.

SECTION III.

Admission of new States.

1. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected

within the jurisdiction of any other State, nor any State be formed by the junction of two or more States, or parts of States, without the consent of the Legislatures of the States concerned, as well as of the Congress.

Congress to have power over territory.

2. The Congress shall have power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

SECTION IV.

Republican form of government guaranteed to each State.

1. The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and on application of the Legislature, or of the Executive (when the Legislature cannot be convened), against domestic violence.

ARTICLE V.

OF AMENDMENTS.

Mode of amending the Constitution.

1. The Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to the Constitution; or on the application of the Legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which in either case shall be valid to all intents and purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided, that no amendment which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI.

All debts contracted, and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

Constitution to be the supreme law of the land; the State judges bound thereby.

2. This Constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land ; and the judges, in every State, shall be bound thereby ; any thing in the Constitution or laws of any State to the contrary notwithstanding.

Certain officers to take oath to support this Constitution; no religious test.

3. The Senators and Representatives before mentioned, and the members of the several State Legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution ; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

How ratified.

1. The ratification of the Conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

Done in Convention, by the unanimous consent of the States present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the Independence of the United States of America the twelfth. In witness whereof, we have hereunto subscribed our names.

GEORGE WASHINGTON,

PRESIDENT, AND DEPUTY FROM VIRGINIA.

IN CONGRESS,

SATURDAY, SEPT. 13, 1788.

On the question to agree to the following proposition, it was resolved in the affirmative, by the unanimous votes of nine States, viz.: of New Hampshire, Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Virginia, South Carolina and Georgia.

Constitution declared to be ratified.

WHEREAS, the Convention assembled in Philadelphia, pursuant to the resolution of Congress of the 21st February, 1787, did, on the 17th of September, in the same year, report to the United States, in Congress assembled, a Constitution for the United States; whereupon, Congress, on the 28th of the same September, did resolve unanimously, "That the said report, with the resolutions and letter accompanying the same, be transmitted to the several Legislatures, in order to be submitted to a convention of delegates, chosen in each State by the people thereof, in conformity to the resolves of the Convention made and provided in that case;" *And Whereas*, The Constitution so reported by the Convention, and by Congress transmitted to the several Legislatures, has been ratified in the manner therein declared to be sufficient for the establishment of the same, and such ratifications, duly authenticated, have been received by Congress, and are filed in the office of the Secretary; therefore,

Government to go into operation.

Resolved, That the first Wednesday in January next be the day for appointing electors in the several States, which, before the said day, shall have ratified the said Constitution; that the first Wednesday in February next shall be the day for the electors to assemble in their respective States, and vote for a President; and that the first Wednesday in March next be the time, and the present seat of Congress the place for commencing proceedings under the said Constitution.

[The following amendments, from 1 to 10 inclusive, were proposed at the first session of the first Congress of the United States, which was begun and held at the city of New York on the 4th of March, 1789, and were adopted by the requisite number of States.—1 Vol. Laws of U. S., p. 72].

[The preamble and resolution following, preceded the original proposition of the amendments, and as they have been supposed by a high equity judge (8th Wendell's Reports, p. 100), to have an important bearing on the construction of those amendments, they are here inserted. They will be found in the journals of the first session of the first Congress].

Congress of the United States, begun and held at the city of New York, on Wednesday, the 4th of March, 1789. The Conventions of a number of the States having at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added; and as extending the ground of public confidence in the Government, will but insure the beneficent ends of its institution:

Resolved, by the Senate and House of Representatives of the United States of America, in Congress assembled (two-thirds of both houses concurring), That the following articles be proposed to the Legislatures of the several States, as amendments to the Constitution of the United States, all or any of which articles, when ratified by three-fourths of the said Legislatures, to be valid to all intents and purposes, as part of the said Constitution, viz:

AMENDMENTS.

ARTICLE I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. Restrictions of the powers of Congress.

ARTICLE II.

A well regulated militia being necessary to the security of a Free State, the right of the people to keep and bear arms shall not be infringed. People may keep arms.

ARTICLE III.

No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, but in a manner to be prescribed by law. Quartering of soldiers.

ARTICLE IV.

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. Search warrants.

ARTICLE V.

Proceedings against persons charged with crimes; their rights.

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Private property.

ARTICLE VI.

Rights of the accused.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense.

ARTICLE VII.

Rights of trial by jury.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

ARTICLE VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Excessive bail, etc.

ARTICLE IX.

The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

Construction of Constitution.

ARTICLE X.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Reserved powers.

[The following amendment was proposed at the second session of the third Congress. It is printed in the laws of the United States, 1st vol., p. 73, as Article 11.]

ARTICLE XI.

The judicial powers of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.

Construction of Judicial powers.

[The three following sections were proposed as amendments at the first session of the eighth Congress. They are printed in the laws of the United States as Article 12.]

ARTICLE XII.

Mode of electing President and Vice President of the United States; choosing President.

1. The electors shall meet in their respective States, and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice President; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice President, and the number of votes for each, which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such a majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But, in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice President shall act as President, as in case of the death or other constitutional disability of the President.

Vice President.

2. The person having the greatest number of votes as Vice President shall be the Vice President, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list the Senate shall choose the Vice President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice.

3. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice President of the United States. **Qualification.**

ARTICLE XIII.

ABOLITION OF SLAVERY.

SECTION I.

Neither slavery, nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SECTION II.

Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XIV.

SECTION I.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

SECTION II.

Basis of representation. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age and citizens of the United States, or in any way abridged except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SECTION III.

Who shall be eligible to certain federal offices, civil and military.

No person shall be a Senator or Representative in Congress, or elector of President or Vice President, or hold any office, civil or military, under the United States, or under any State, who having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each House, remove such disability.

SECTION IV.

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

SECTION V.

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

ARTICLE XV.

SECTION I.

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Equal suffrage.

SECTION II.

The Congress shall have power to enforce this article, by appropriate legislation.

AN ACT TO ESTABLISH A

TERRITORIAL GOVERNMENT FOR UTAH.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*: That all that part of the territory of the United States included within the following limits, to wit: bounded on the west by the State of California, on the north by the Territory of Oregon, and on the east by the summit of the Rocky Mountains, and on the south by the thirty-seventh parallel of north latitude, be, and the same is hereby created into a temporary government by the name of the Territory of Utah; and, when admitted as a State, the said Territory, or any portion of the same, shall be received into the Union, with or without slavery, as their Constitution may prescribe at the time of their admission: *Provided*, That nothing in this act contained shall be construed to inhibit the Government of the United States from dividing said Territory into two or more Territories, in such manner and at such times as Congress shall deem convenient and proper, or from attaching any portion of said Territory to any other State or Territory of the United States.

SEC. 2. And be it further enacted: That the Executive power and authority in and over said Territory of Utah shall be vested in a Governor, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the President of the United States. The governor shall reside within the said Territory, shall be Commander-in-Chief of the Militia thereof, shall perform the duties and receive the emoluments of Superintendent of Indian Affairs, and shall approve all laws passed by the Legislative Assembly before they shall take effect; he may grant pardons for offences against the laws of said Territory, and reprieves for offences against the laws of the United States until the decision of the President can be made known thereon; he shall commission all officers who shall be appointed to office under the laws of the said Territory, and shall take care that the laws be faithfully executed.

SEC. 3. And be it further enacted: That there shall be a Secretary of said Territory, who shall reside therein, and hold his office for four years, unless sooner removed by the President of the United States; he shall record and preserve all the laws and proceedings of the Legislative Assembly hereinafter constituted, and all the acts and proceedings of the governor in his executive department; he shall transmit one copy of the laws and one copy of the executive proceedings, on or before the first day of December in each year, to the President of the United States, and at the same time two copies of the laws to the Speaker of the House of Representatives and the President of the Senate, for the use of Congress. And in case of the death, removal, resignation, or other necessary absence of the governor from the Territory, the secretary shall have, and he is hereby authorized and required to execute and perform all the powers and duties of the governor during such vacancy or necessary absence, or until another governor shall be duly appointed to fill such vacancy.

SEC. 4. And be it further enacted: That the legislative power and authority of said Territory shall be vested in the governor and a Legislative Assembly. The Legislative Assembly shall consist of a Council and House of Representatives. The Council shall consist of thirteen members, having the qualifications of voters as hereinafter prescribed, whose term of service shall continue two years. The House of Representatives shall consist of twenty-six members, possessing the same qualifications as prescribed for members of the Council, and whose term of service shall continue one year. An apportionment shall be made, as nearly equal as practicable, among the several counties or districts, for the election of the Council and House of Representatives, giving to each section of the Territory representation in the ratio of its population, Indians excepted, as nearly as may be. And the members of the Council and of the House of Representatives shall reside in and be inhabitants of the district for which they may be elected respectively. Previous to the first election, the governor shall cause a census or enumeration of the inhabitants of the several counties and districts of the Territory to be taken, and the first election shall be held at such time and places, and be conducted in such manner as the governor shall appoint and direct; and he shall, at the same time, declare the number of members of the Council and House of Representatives to which each of the counties or districts shall be entitled under this act. The number of persons authorized to be elected having the highest number of votes in each said Council districts, for members of the Council, shall be declared by the governor to be duly elected to the Council; and the person or persons authorized to be elected having the highest number of votes for the House of Representatives, equal to the number to which each county or district shall be entitled, shall be declared by the governor to be duly elected members of the House of Representatives: *Provided*, that in case of a tie between two or more persons voted for, the governor shall order a new election to supply the vacancy made by such a tie. And the persons thus elected to the Legislative Assembly shall meet at such place and on such day as the governor shall appoint; but thereafter, the time, place and manner of holding and conducting all elections by the people, and the apportioning the representation in the several counties or districts to the Council and House of Representatives, according to the population, shall be prescribed by law, as well as the day of the commencement of the regular sessions of the Legislative Assembly: *Provided*, that no one session shall exceed the term of forty days.

SEC. 5. And be it further enacted: That every free white male inhabitant above the age of twenty-one years, who shall have been a resident of said Territory at the time of the passage of this act, shall be entitled to vote at the first election, and shall be eligible to any office within the said Territory; but the qualifications of voters and of holding office at all subsequent elections shall be such as shall be prescribed by the Legislative Assembly: *Provided*, that the right of suffrage and of holding office shall be exercised only by citizens of the United States, including those recognized as citizens by the treaty with the Republic of Mexico, concluded February second, eighteen hundred and forty-eight.

SEC. 6. And be it further enacted: That the legislative power of said Territory shall extend to all rightful subjects of legislation, consistent with the Constitution of the United States and the provisions of this act; but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents. All the laws passed by the Legislative Assembly and governor shall be submitted to the Congress of the United States, and if disapproved shall be null and of no effect.

SEC. 7. And be it further enacted: That all township, district, and county officers, not herein otherwise provided for, shall be appointed or elected, as the case may be, in such manner as shall be provided by the governor and Legislative Assembly of the Territory of Utah. The governor shall nominate, and, by and with the advice and consent of the Legislative Council, appoint all officers not herein otherwise provided for; and in the first instance the governor alone may appoint all said officers, who shall hold their offices until the end of the first session of the Legislative Assembly, and shall lay off the necessary districts for members of the Council and House of Representatives, and all other offices.

SEC. 8. And be it further enacted: That no member of the Legislative Assembly shall hold or be appointed to any office which shall have been created, or the salary or emoluments of which shall have been increased while he was a member, during the term for which he was elected, and for one year after the expiration of such term; and no person holding a commission or appointment under the United States, except postmasters, shall be a member of the Legislative Assembly, or shall hold any office under the government of said Territory.

SEC. 9. And be it further enacted: That the judicial power of said Territory shall be vested in a Supreme Court, District Courts, Probate Courts, and in Justices of the Peace. The supreme court shall consist of a Chief Justice and two Associate Justices, any two of whom shall constitute a quorum, and who shall hold a term at the seat of government of said Territory annually, and they shall hold their offices during the period of four years. The said Territory shall be divided into three judicial districts, and a district court shall be held in each of said districts by one of the justices of the supreme court, at such time and place as may be prescribed by law; and the judges shall, after their appointments, respectively reside in the districts which shall be assigned them. The jurisdiction of the several courts herein provided for, both appellate and original, and that of the probate courts, and of justices of the peace, shall be as limited by law: *Provided*, that justices of the peace shall not have jurisdiction of any matter in controversy when the title or boundaries of land may be in dispute, or where the debt or sum claimed shall exceed one hundred dollars; and the said supreme and district courts respectively shall possess chancery as well as common law jurisdiction. Each district court, or the judge thereof, shall appoint its clerk, who shall also be the registrar in chancery, and shall keep his office at the place where the court may be held. Writs of error, bills of exception, and appeals shall be allowed in all cases from the final decisions of said district courts to the supreme court, under such regulations as may be prescribed by law; but in no case removed to the supreme court shall trial by jury be allowed in said court. The supreme court, or the justices thereof, shall appoint its own clerk, and every clerk shall hold his office at the pleasure of the court for which he shall have been appointed. Writs of error and appeals from the final decision of said supreme court shall be allowed, and may be taken to the Supreme Court of the United States, in the same manner and under the same regulations as from the circuit courts of the United States, where the value of the property or the amount in controversy, to be ascertained by the oath or affirmation of either party, or other competent witness, shall exceed one thousand dollars, except only, that in all cases involving title to slaves, the said writs of error or appeals shall be allowed and decided by the said supreme court, without regard to the value of the matter, property, or title in controversy; and except, also, that a writ of error or appeal, shall also be allowed to the Supreme Court of the United States, from the decisions of the said supreme court created by this act, or of any judge thereof, upon any writ of *habeas corpus* involving the question of personal freedom; and each of the said district courts shall have and exercise the same jurisdiction in all cases arising under the Constitution and laws of the United States as is vested in the circuit and district courts of the United States; and the said supreme and district courts of the said Territory, and the respective judges thereof, shall and may grant writs of *habeas corpus* in all cases in which the same are granted by the judges of the United States in the District of Columbia; and the first six days of every term of said courts, or so much thereof as shall be necessary, shall be appropriated to the trial of causes arising under the said Constitution and laws; and writs of error and appeal, in all such cases, shall be made to the supreme court of said Territory, the same as in other cases. The said clerk shall receive in all such cases the same fees which the clerks of the district courts of Oregon Territory now receive for similar services.

Sec. 10. And be it further enacted: That there shall be appointed an Attorney for said Territory, who shall continue in office for four years, unless sooner removed by the President, and who shall receive the same fees and salary as the attorney of the United States for the present Territory of Oregon. There shall also be a Marshal for the Territory appointed, who shall hold his office for four years, unless sooner removed by the President, and who shall execute all processes issuing from the said courts when exercising their jurisdiction as circuit and district courts of the United States; he shall perform the duties, be subject to the same regulations and penalties, and be entitled to the same fees as the marshal of the district court of the United States for the present Territory of Oregon, and shall, in addition, be paid two hundred dollars annually as a compensation for extra services.

Sec. 11. And be it further enacted: That the governor, secretary, chief justice and associate justices, attorney, and marshal, shall be nominated, and, by and with the advice and consent of the Senate, appointed by the President of the United States. The governor and secretary to be appointed as aforesaid shall, before they act as such, respectively take an oath or affirmation before the district judge, or some justice of the peace in the limits of said Territory, duly authorized to administer oaths and affirmations by the laws now in force therein, or before the Chief Justice or some Associate Justice of the Supreme Court of the United States, to support the Constitution of the United States, and faithfully to discharge the duties of their respective offices; which said oaths, when so taken, shall be certified by the person by whom the same shall have been taken, and such certificates shall be received and recorded by the said secretary among the executive proceedings; and the chief justice and associate justices, and all other civil officers in said Territory, before they act as such, shall take a like oath or affirmation before the said governor or secretary, or some judge or justice of the peace of the Territory who may be duly commissioned or qualified, which said oath or affirmation shall be certified and transmitted by the person taking the same to the secretary, to be by him recorded as aforesaid; and afterwards, the like oath or affirmation shall be taken, certified, and recorded in such manner and form as may be prescribed by law. The governor shall receive an annual salary of fifteen hundred dollars as governor, and one thousand dollars as superintendent of Indian affairs. The chief justice and associate justices shall each receive an annual salary of eighteen hundred dollars. The secretary shall receive an annual salary of eighteen hundred dollars. The said salaries shall be paid quarter-yearly, at the Treasury of the United States. The members of the Legislative Assembly shall be entitled to receive three dollars each per day during their attendance at the sessions thereof, and three dollars each for twenty miles' travel, in going to and returning from the said sessions, estimated according to the nearest usually traveled route. There shall be appropriated annually the sum of one thousand dollars, to be expended by the governor to defray the contingent expenses of the Territory. There shall also be appropriated annually a sufficient sum to be expended by the secretary of the Territory, and upon an estimate to be made by the Secretary of the Treasury of the United States, to defray the expenses of the Legislative Assembly, the printing of the laws, and other incidental expenses; and the secretary of the Territory shall annually account to the Secretary of the Treasury of the United States for the manner in which the aforesaid sum shall have been expended.

SEC. 12. And be it further enacted: That the Legislative Assembly of the Territory of Utah shall hold its first session at such time and place in said Territory as the governor thereof shall appoint and direct; and at said first session, or as soon thereafter as they shall deem expedient, the governor and Legislative Assembly shall proceed to locate and establish the seat of government for said Territory, at such place as they may deem eligible; which place, however, shall thereafter be subject to be changed by the said governor and Legislative Assembly. And the sum of twenty thousand dollars, out of any money in the Treasury not otherwise appropriated, is hereby appropriated and granted to said Territory of Utah to be applied by the governor and Legislative Assembly to the erection of suitable public buildings at the seat of government.

SEC. 13. And be it further enacted: That a Delegate to the House of Representatives of the United States to serve during each Congress of the United States, may be elected by the voters qualified to elect members of the Legislative Assembly, who shall be entitled to the same rights and privileges as are exercised and enjoyed by the delegates from the several other Territories of the United States to the said House of Representatives. The first election shall be held at such time and places, and be conducted in such manner as the governor shall appoint and direct; and at all subsequent elections, the times, places, and manner of holding the elections shall be prescribed by law. The person having the greatest number of votes shall be declared by the governor to be duly elected, and a certificate thereof shall be given accordingly: *Provided*, That said delegate shall receive no higher sum for mileage than is allowed by law to the delegate from Oregon.

SEC. 14. And be it further enacted: That the sum of five thousand dollars be, and the same is hereby appropriated out of any moneys in the Treasury not otherwise appropriated, to be expended by and under the direction of the said governor of the Territory of Utah, in the purchase of a library, to be kept at the seat of government for the use of the governor, Legislative Assembly, judges of the supreme court, secretary, marshal and attorney of said Territory, and such other persons and under such regulations as shall be prescribed by law.

SEC. 15. And be it further enacted: That when the lands in said Territory shall be surveyed under the direction of the Government of the United States, preparatory to bringing the same into market, sections numbered sixteen and thirty-six in each township in said Territory shall be, and the same are hereby reserved for the purpose of being applied to schools in said Territory, and in the States and Territories hereafter to be erected out of the same.

SEC. 16. And be it further enacted: That temporarily, and until otherwise provided by law, the governor of said Territory may define the judicial districts of said Territory, and assign the judges who may be appointed for said Territory to the several districts, and also appoint the times and places for holding courts in the several counties or subdivisions in each of said judicial districts, by proclamation to be issued by him; but the Legislative Assembly, at their first or any subsequent session, may organize, alter, or modify such judicial districts, and assign the judges, and alter the times and places of holding the courts, as to them shall seem proper and convenient.

SEC. 17. And be it further enacted: That the Constitution and laws of the United States are hereby extended over and declared to be in force in said Territory of Utah, so far as the same, or any provision thereof, may be applicable.

Approved September 9, 1850.

PROVISIONS

OF THE

UNITED STATES STATUTES,

APPLICABLE TO THE TERRITORY OF UTAH.

CHAPTER I.

PROVISIONS COMMON TO ALL THE TERRITORIES.

[Revised Statutes of the United States, Page 326.]

SECTION.
1839. Right of Indians in person and property not impaired by this title, &c., boundaries, &c.
1840. Authority to regulate Indians.
1841. Executive power.
1842. Veto power.
1843. Secretary.
1844. Secretary's duties.
1845. Salaries of governors and secretaries.
1846. Legislative power.
1847. Census and elections.
1848. Time and place of holding elections.
1849. Apportionment.
1850. Laws to be submitted to Congress.
1851. Extent of legislative power.
1852. Limit of time of sessions.
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1854. Members of Legislature prohibited from holding certain offices.
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1856. Election of justices of the peace and militia officers.
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SECTION.
1870. Clerk of supreme court.
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1889. Legislature not to grant special charters.
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1891. Constitution and laws of United States made applicable to all the Territories.
1892. Penitentiaries.
1893. Rules for their government.
1894. Payment of marshal, &c., and of expenses of subsistence, &c., of offenders.
1895. Imprisonment in penitentiaries.

SEC. 1839. Nothing in this title shall be construed to impair the rights of person or property pertaining to the Indians in any Territory, so long as such rights remain unextinguished by treaty between the United States and such Indians, or to include any territory which, by treaty with any Indian tribe, is not, without the consent of such tribe, embraced within the territorial limits or jurisdiction of any State or Territory; but all such territory shall be excepted out of the boundaries, and constitute no part of any Territory now or hereafter organized until such tribe signifies its assent to the President to be embraced within a particular Territory.

SEC. 1840. Nor shall anything in this title be construed to affect the authority of the United States to make any regulations respecting the Indians of any Territory, their lands, property, or rights, by treaty, law, or otherwise, in the same manner as might be made if no temporary government existed, or is hereafter established, in any such Territory.

SEC. 1841. The executive power of each Territory shall be vested in a Governor, who shall hold his office for four years, and until his successor is appointed and qualified, unless sooner removed by the President. He shall reside in the Territory for which he is appointed, and shall be Commander-in-Chief of the militia thereof. He may grant pardons and reprieves, and remit fines and forfeitures, for offences against the laws of the Territory for which he is appointed, and respites for offences against the laws of the United States, till the decision of the President can be made known thereon. He shall commission all officers who are appointed under the laws of such Territory, and shall take care that the laws thereof be faithfully executed.

SEC. 1842. Every bill which has passed the Legislative Assembly of any Territory shall, before it becomes a law, be presented to the governor. If he approve, he shall sign it, but if not, he shall return it, with his objections, to that house in which it originated, and that house shall enter the objections at large on its journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; and, if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for or against the bill shall be entered on the journal of each house. If any bill is not returned by the governor within three days, Sundays excluded, except in Washington and Wyoming, where the term is five days, Sundays excluded, after it has been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Legislative Assembly, by adjournment *sine die*, prevent its return, in which case it shall not be a law. *Provided,* That so much of this section as provides for making any bill passed by the Legislative Assembly of a Territory a law, without the approval of the governor, shall not apply to the Territories of Utah and Arizona.

SEC. 1843. There shall be appointed a Secretary for each Territory, who shall reside within the Territory for which he is appointed, and shall hold his office for four years, and until his successor is appointed and qualified, unless sooner removed by the President. In case of the death, removal, resignation, or absence of the governor from the Territory, the secretary shall execute all the powers and perform all the duties of governor during such vacancy or absence or until another governor is appointed and qualified.

SEC. 1844. The secretary shall record and preserve all the laws and proceedings of the Legislative Assembly, and all the acts and proceedings of the governor in the executive department; he shall transmit one copy of the laws and journals of the Legislative Assembly, within thirty days after the end of each session thereof, to the President, and two copies of the laws, within like time, to the President of the Senate, and to the Speaker of the House of Representatives, for the use of Congress. He shall transmit one copy of the executive proceedings and official correspondence semi-annually, on the first day of January and July in each year, to the President. He shall prepare the acts passed by the Legislative Assembly for publication, and furnish a copy thereof to the public printer of the Territory, within ten days after the passage of each act.

SEC. 1845. From and after the first day of July, eighteen hundred and seventy-three, the annual salaries of the governors of the several Territories shall be three thousand five hundred dollars, and the salaries of the Secretaries shall be two thousand five hundred dollars each.

SEC. 1846. The legislative power in each Territory shall be vested in the governor and a Legislative Assembly. The Legislative Assembly shall consist of a Council and House of Representatives. The members of both branches of the Legislative Assembly shall have the qualifications of voters as herein prescribed. They shall be chosen for the term of two years, and the sessions of the respective Legislative Assemblies shall be biennial. Each Legislative Assembly shall fix by law the day of the commencement of its regular sessions. The members of the Council and of the House of Representatives shall reside in the district or county for which they are respectively elected.

SEC. 1847. Previous to the first election for members of the Legislative Assembly of a Territory in which Congress may hereafter provide a temporary government, the governor shall cause a census of the inhabitants and qualified voters of the several counties and districts of the Territory, to be taken by such persons and in such mode as he may designate and appoint, and the persons so appointed shall receive a reasonable compensation for their services. And the first election shall be held at such time and places, and be conducted in such manner, both as to the persons who superintend such election and the returns thereof, as the Governor may direct; and he shall, at the same time, declare the number of members of the Council and House of Representatives to which each of the counties or districts is entitled under the act providing such temporary government for the particular Territory. The persons having the highest number of legal votes in each of the districts for members of the Council shall be declared by the governor to be duly elected to the Council; and the persons having the highest number of legal votes for the House of Representatives shall be declared by the governor to be duly elected members of that House; but in case two or more persons voted for have an equal number of votes, and in case a vacancy otherwise occurs in either branch of the Legislative Assembly, the governor shall order a new election; and the persons thus elected to the Legislative Assembly shall meet at such place and on such day as the governor appoints.

SEC. 1848. After such first election, however, the time, place, and manner of holding elections by the people in any newly-created Territory, as well as of holding all such elections in Territories now organized, shall be prescribed by the laws of each Territory.

SEC. 1849. The apportionment of representation, which the governor is authorized to make by section eighteen hundred and forty-seven, in the case of a Territory hereafter erected by Congress, shall be as nearly equal as practicable among the several districts and counties for such first election of the Council and House of Representatives, giving to each section of the Territory representation in the ratio of its population, except Indians not taxed, and thereafter in such new Territory, as well as in all Territories now organized, the Legislative Assemblies, respectively, may re-adjust and apportion the representation to the two houses thereof, among the several counties and districts, in such manner, from time to time, as they deem just and proper; but the number of either house, as authorized by law, shall not be increased.

SEC. 1850. All laws passed by the Legislative Assembly and governor of any Territory except in the Territories of Colorado, Dakota, Idaho, Montana, and Wyoming, shall be submitted to Congress, and, if disapproved, shall be null and of no effect.

SEC. 1851. The legislative power of every Territory shall extend to all rightful subjects of legislation not inconsistent with the Constitution and laws of the United States. But no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents.

SEC. 1852. The sessions of the Legislative Assemblies of the several Territories of the United States shall be limited to forty days' duration.

SEC. 1853. The members of each branch of the several Territorial Legislatures shall receive a compensation of six dollars per day during the sessions herein provided for, and they shall receive such mileage as now provided by law: *Provided*, That the President of the Council and the Speaker of the House of Representatives shall each receive a compensation of ten dollars per day.

SEC. 1854. No member of the Legislative Assembly of any Territory now organized shall hold or be appointed to any office which has been created, or the salary or emoluments of which have been increased, while he was a member, during the term for which he was elected, and for one year after the expiration of such term; but this restriction shall not be applicable to members of the first Legislative Assembly in any Territory hereafter organized; and no person holding a commission or appointment under the United States, except postmasters, shall be a member of the Legislative Assembly, or shall hold any office under the government of any Territory. The exception of postmasters shall not apply in the Territory of Washington.

SEC. 1855. No law of any Territorial Legislature shall be made or enforced by which the governor or secretary of a Territory, or the members or officers of any Territorial Legislature are paid any compensation other than that provided by the laws of the United States.

SEC. 1856. Justices of the peace and all general officers of the militia in the several Territories shall be elected by the people in such manner as the respective Legislatures may provide by law.

SEC. 1857. All township, district, and county officers, except justices of the peace and general officers of the militia, shall be appointed or elected in such manner as may be provided by the governor and Legislative Assembly of each Territory; and all other officers not herein otherwise provided for, the governor shall nominate, and by and with the advice and consent of the Legislative Council of each Territory, shall appoint; but, in the first instance, where a new Territory is hereafter created by Congress, the governor alone may appoint all the officers referred to in this and the preceding section and assign them to their respective townships, districts, and counties; and the officers so appointed shall hold their offices until the end of the first session of the Legislative Assembly.

SEC. 1858. In any of the Territories, whenever a vacancy happens from resignation or death, during the recess of the Legislative

Council, in any office which, under the Organic Act of any Territory is to be filled by appointment of the governor, by and with the advice and consent of the Council, the governor shall fill such vacancy by granting a commission, which shall expire at the end of the next session of the Legislative Council.

SEC. 1859. Every male citizen above the age of twenty-one, including persons who have legally declared their intention to become citizens in any Territory hereafter organized, and who are actual residents of such Territory at the time of the organization thereof, shall be entitled to vote at the first election in such Territory, and to hold any office therein; subject, nevertheless, to the limitations specified in the next section.

SEC. 1860. At all subsequent elections, however, in any Territory hereafter organized by Congress, as well as at all elections in Territories already organized, the qualifications of voters and of holding office shall be such as may be prescribed by the Legislative Assembly of each Territory: subject, nevertheless, to the following restrictions on the power of the Legislative Assembly, namely:

First. The right of suffrage and of holding office shall be exercised only by citizens of the United States above the age of twenty-one years, and by those above that age who have declared on oath, before a competent court of record, their intention to become such, and have taken an oath to support the Constitution and Government of the United States.

Second. There shall be no denial of the elective franchise or of holding office to a citizen on account of race, color, or previous condition of servitude.

Third. No officer, soldier, seaman, mariner, or other person in the Army or Navy, or attached to troops in the service of the United States, shall be allowed to vote in any Territory, by reason of being on service therein, unless such Territory is, and has been for the period of six months, his permanent domicile.

Fourth. No person belonging to the Army or Navy shall be elected to or hold any civil office or appointment in any Territory.

SEC. 1861. The subordinate officers of each branch of every Legislative Assembly shall consist of one Chief Clerk, who shall receive a compensation of eight dollars per day, and of one Assistant Clerk, one Enrolling Clerk, one Engrossing Clerk, one Sergeant-at-Arms, one Door-keeper, one Messenger, and one Watchman, who shall each receive a compensation of five dollars per day during the sessions, and no charge for a greater number of officers and attendants, or any larger *per diem*, shall be allowed or paid by the United States to any Territory.

SEC. 1862. Every Territory shall have the right to send a Delegate to the House of Representatives of the United States, to serve during each Congress, who shall be elected by the voters in the Territory qualified to elect members of the Legislative Assembly thereof. The person having the greatest number of votes shall be declared by the governor duly elected, and a certificate shall be given accordingly. Every such delegate shall have a seat in the House of Representatives, with the right of debating, but not of voting.

SEC. 1863. The first election of a delegate in any Territory for which a temporary government is hereafter provided by Congress shall be held at the time and places and in the manner the governor of such Territory may direct, after at least sixty days' notice, to be given by proclamation; but at all subsequent elections therein, as well as at all elections for a delegate in organized Territories, such time, places, and manner of holding the election shall be prescribed by the law of each Territory.

SEC. 1864. The supreme court of every Territory shall consist of a Chief Justice and two Associate Justices, any two of whom shall constitute a quorum, and they shall hold their offices for four years, and until their successors are appointed and qualified. They shall hold a term annually at the seat of government of the Territory for which they are respectively appointed. (1)

SEC. 1865. Every Territory shall be divided into three judicial districts; and a district court shall be held in each district of the Territory by one of the justices of the supreme court, at such time and place as may be prescribed by law (2) and each judge, after assignment, shall reside in the district to which he is assigned.

SEC. 1866. The jurisdiction, both appellate and original, of the courts provided for in section nineteen hundred and seven and nineteen hundred and eight, shall be limited by law.

SEC. 1867. No justices of the peace in any Territory shall have jurisdiction of any case in which the title to land, or the boundary thereof, in anywise comes in question.

SEC. 1868. The supreme court and the district courts, respectively, of every Territory, shall possess chancery as well as common law jurisdiction.

SEC. 1869. Writs of error, bills of exception, and appeals shall be allowed, in all cases, from the final decisions of the district courts to the supreme court of all the Territories, respectively, under such regulation as may be prescribed by law; but in no case removed to the supreme court shall trial by jury be allowed in that court.

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(1) In this Territory, by act of Congress approved June 23, 1874, two terms of the supreme court must be held each year.

(2) By act of Congress approved June 23, 1874, four terms of the district court must be held in each district in this Territory.

Sec. 1870. The supreme court of each Territory shall appoint its own clerk, who shall hold his office at the pleasure of the court for which he is appointed.

Sec. 1871. Each judge of the supreme court of the respective Territories shall designate and appoint one person as clerk of the district over which he presides, where one is not already appointed, and shall designate and retain but one such clerk where more than one is already appointed, and only such district clerk shall be entitled to a compensation from the United States.

Sec. 1872. Every district clerk shall be also the register in chancery, and shall reside and keep his office at the place where the court is held.

Sec. 1873. Temporarily, and until otherwise provided by law, the governor of every Territory which may be hereafter established shall define, by proclamation, the judicial districts of such Territory and assign the judges appointed for such Territory to the several districts as well as fix the times and places for holding courts in the respective counties or sub-divisions of each judicial district.

Sec. 1874. The judges of the supreme court of each Territory are authorized to hold court within their respective districts, in the counties wherein, by the laws of the Territory, courts have been or may be established, for the purpose of hearing and determining all matters and causes, except those in which the United States is a party; but the expense of holding such courts shall be paid by the Territory, or by the counties in which the courts are held, and the United States shall in no case be chargeable therewith.

Sec. 1875. There shall be appointed in each Territory a person learned in the law, to act as Attorney for the United States. He shall continue in office for four years, and until his successor is appointed and qualified, unless sooner removed by the President.

Sec. 1876. There shall be appointed a Marshal for each Territory. He shall execute all process issuing from the Territorial courts when exercising their jurisdiction as circuit and district courts of the United States. He shall have the power and perform the duties, and be subject to the regulations and penalties, imposed by law on the marshals for the several judicial districts of the United States. He shall hold his office for four years and until his successor is appointed and qualified, unless sooner removed by the President.

Sec. 1877. The governor, secretary, chief justice, and associate justices, attorney, and marshal of every Territory shall be nominated, and, by and with the advice and consent of the Senate, appointed by the President.

Sec. 1878. The governor and secretary for each Territory shall, before they act as such, respectively take an oath before the district judge or some justice of the peace in the limits of the Territory for which they were appointed, duly authorized to administer oaths by the laws in force therein, or before the chief justice, or some associate justice of the Supreme Court of the United States, to support the Constitution of the United States and faithfully to discharge the duties of their respective offices; and such oaths shall be certified by the person before whom the same are taken; and such certificate shall be received and recorded by the secretary among the executive proceedings; and the chief justice and associate justices, and all other civil officers appointed for any Territory, before they act as such, shall take a like oath before the governor or secretary, or some judge or justice of the peace of the Territory who may be duly commissioned and qualified, and such oath shall be certified and transmitted by the person taking the same to the secretary, to be by him recorded as above directed; but after the first qualification of the officers herein specified in the case of a new Territory, as well as in all organized Territories, the like oath shall be taken, certified, and recorded in such manner and form as may be prescribed by the law of each Territory.

SEC. 1879. The annual salary of the chief justice and associate justices of all the Territories now organized shall be three thousand dollars each.

SEC. 1880. The salary of the attorney of the United States for each Territory, shall be at the rate of two hundred and fifty dollars anually.

SEC. 1881. The salary of the marshal of the United States for each Territory shall be at the rate of two hundred dollars a year.

SEC. 1882. The salaries provided for in this Title, to be paid to the governor, secretary, chief justice and associate justices, district attorney, and marshal of the several Territories, shall be paid quarter-yearly at the Treasury of the United States.

SEC. 1883. The fees and costs to be allowed to the United States attorneys and marshals, to the clerks of the supreme and district courts, and to jurors, witnesses, commissioners, and printers, in the Territories of the United States shall be the same for similar services by such persons as prescribed in chapter sixteen, title "THE JUDICIARY," and no other compensation shall be taxed or allowed.

SEC. 1884. When any officer of a Territory is absent therefrom, and from the duties of his office, no salary shall be paid him during the year in which such absence occurs, unless good cause therefor be shown to the President, who shall officially certify his opinion of such cause to the proper accounting officer of the Treasury, to be filed in his office.

SEC. 1885. The Legislative Assembly of every Territory hereafter organized shall hold its first session at such time and place in the Territory as the governor thereof shall appoint and direct; and at the first session of the Legislative Assembly, or as soon thereafter as it may be deemed expedient, the governor and Legislative Assembly shall proceed to locate and establish the seat of government for the Territory at such place as they may think proper; but such place shall thereafter be subject to be changed by the governor and Legislative Assembly.

SEC. 1886. All accounts for disbursements, in the Territories of the United States, of money appropriated by Congress for the support of government therein, shall be settled and adjusted at the Treasury Department; and no act, resolution, or order of the Legislature of any Territory, directing the expenditure of the sum, shall be deemed a sufficient authority for such disbursement, but sufficient vouchers and proof for the same shall be required by the accounting officers of the Treasury. No payment shall be made or allowed, unless the Secretary of the Treasury has estimated therefor and the object been approved by Congress. No session of the Legislature of a Territory shall be held until the appropriation for its expenses has been made.

SEC. 1887. Hereafter no expense for printing, exceeding four thousand dollars, including printing laws, journals, bills, and necessary printing of the same nature, shall be incurred for any session of the Legislature of any of the Territories.

SEC. 1888. No Legislative Assembly of a Territory shall, in any instance or under any pretext, exceed the amount appropriated by Congress for its annual expenses.

SEC. 1889. The Legislative Assemblies of the several Territories shall not grant private charters or especial privileges, but they may, by general incorporation acts, permit persons to associate themselves together as bodies corporate for mining, manufacturing, and other industrial pursuits, or the construction or operation of railroads, wagon-roads, irrigating ditches, and the colonization and improvement of lands in connection therewith, or for colleges, seminaries, churches, libraries, or any benevolent, charitable or scientific association.

SEC. 1890. No corporation or association for religious or charitaitable purposes shall acquire or hold real estate in any Territory, during the existence of the Territorial government, of a greater value than fifty thousand dollars; and all real estate acquired or held by such corporation or association contrary hereto shall be forfeited and escheat to the United States; but existing vested rights in real estate shall not be impaired by the provisions of this section.

SEC. 1891. The Constitution and all laws of the United States which are not locally inapplicable shall have the same force and effect within all the organized Territories, and in every Territory hereafter organized as elsewhere within the United States.

SEC. 1892. Any penitentiary which has been, or may hereafter be, erected by the United States in an organized Territory shall, when the same is ready for the reception of convicts, be placed under the care and control of the marshal of the United States for the Territory or district in which such penitentiary is situated; except as otherwise provided in the case of the penitentiaries in Montana, Idaho, Wyoming and Colorado.

SEC. 1893. The Attorney General of the United States shall prescribe all needful rules and regulations for the government of such penitentiary, and the marshal having charge thereof shall cause them to be duly and faithfully executed and obeyed, and the reasonable compensation of the marshal and of his deputies for their services under such regulations shall be fixed by the Attorney General.

SEC. 1894. The compensation, as well as the expense incident to the subsistence and employment of offenders against the laws of the United States, who have been, or may hereafter be, sentenced to imprisonment in such penitentiary, shall be chargeable on, and payable out of, the fund for defraying the expenses of suits in which the United States are concerned, and of prosecutions for offenses committed against the United States; but nothing herein shall be construed to increase the maximum compensation now allowed by law to those officers.

SEC. 1895. Any person convicted by a court of competent jurisdiction in a Territory, for a violation of the laws thereof, and sentenced to imprisonment, may, at the cost of such Territory, on such terms and conditions as may be prescribed by such rules and regulations, be received, subsisted, and employed in such penitentiary during the term of his imprisonment, in the same manner as if he had been convicted of an offence against the laws of the United States.

PROVISIONS CONTAINED IN CHAP. II OF TITLE XXIII

OF THE

REVISED STATUTES OF THE UNITED STATES,

ENTITLED

"OF PROVISIONS CONCERNING PARTICULAR ORGANIZED TERRITORIES,"

WHICH ARE

APPLICABLE TO THE TERRITORY OF UTAH.

[Revised Statutes of the United States, page 334.]

SEC. 1897. All that part of the territory of the United States included within the following limits, to wit: Bounded on the west by the State of California, on the north by the State of Oregon, and on the east by the summit of the Rocky Mountains, and on the south by the thirty-seventh parallel of north latitude, is created into a temporary government by the name of the Territory of Utah. (1)

SEC. 1907. The judicial power in New Mexico, Utah, Washington, Colorado, Dakota, Idaho, Montana, and Wyoming, shall be vested in a Supreme Court, District Courts, Probate Courts, and in Justices of the Peace.

SEC. 1909. Writs of error and appeals from the final decisions of the Supreme Courts of either of the Territories of New Mexico, Utah, Colorado, Dakota, Arizona, Idaho, Montana, and Wyoming, shall be allowed to the Supreme Court of the United States, in the same manner and under the same regulations as from the circuit courts of the United States, where the value of the property or the amount in controversy, to be ascertained by the oath of either party, or of other competent witnesses, exceeds one thousand dollars, except that a writ of error or appeal shall be allowed to the Supreme Court of the United States from the decision of the supreme courts created by this title, or of any judge thereof, or of the district courts created by this title, or of any judge thereof, upon writs of *habeas corpus* involving the question of personal freedom.

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(1) A mistake, evidently occasioned by copying the original boundary of the Territory into the revision.

SEC. 1910. Each of the District Courts in the Territories mentioned in the preceding section shall have and exercise the same jurisdiction, in all cases arising under the Constitution and laws of the United States, as is vested in the circuit and district courts of the United States; and the first six days of every term of the respective district courts, or so much thereof as is necessary, shall be appropriated to the trial of causes arising under such Constitution and laws; but writs of error and appeals in all such cases may be had to the supreme court of each Territory as in other cases.

SEC. 1912. The supreme and district courts of each Territory, and the respective judges thereof, except for Idaho and Montana, may grant writs of *habeas corpus* in all cases in which the same are grantable by the judges of the United States in the District of Columbia.

SEC. 1913. The Legislative Assemblies of New Mexico, Utah, Washington, Colorado, Dakota, Arizona, and Wyoming Territories, respectively, may organize, alter, or modify, the several judicial districts thereof, in such manner as each Legislative Assembly deems proper and convenient.

SEC. 1916. The Governor of Utah Territory shall assign the district judges of that Territory to their respective districts, and appoint the time and place of holding court in each of such districts, not exceeding two terms in each district in any one year. (1)

SEC. 1922. The Councils of New Mexico and Utah shall each consist of thirteen members, and the House of Representatives of twenty-six members. (The balance of the section refers to the Legislative Assemblies of the other Territories).

SEC. 1926. Justices of the peace, in the Territories of New Mexico, Utah, Washington, Dakota, Idaho, Montana, and Wyoming, shall not have jurisdiction of any matter in controversy where the debt or sum claimed exceeds one hundred dollars. (2)

SEC. 1935. There shall be appropriated, annually, one thousand dollars, to be expended by the respective governors, to defray the contingent expenses of New Mexico, Utah, Colorado, Dakota, Arizona, Idaho, Montana, and Wyoming, including the salary of the clerk in the executive department of those Territories.

SEC. 1939. There shall be appropriated, respectively, for the Territories of New Mexico, Utah, Colorado, Dakota, Arizona, and Wyoming, annually, a sufficient sum, to be expended by the secretary of each Territory herein named, upon an estimate to be made by the Secretary of the Treasury, to defray the expenses of the Legislative Assembly and other incidental expenses; and the secretary of each Territory above specified shall, annually, account to the Secretary of the Treasury for the manner in which such sum has been expended.

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(1) An act of Congress approved June 23, 1874, provides that there shall be four terms of the district court in each judicial district, each year.

(2) The act of Congress approved June 23, 1874, extends the jurisdiction of justices of the peace, in this Territory, "to all cases where the debt or sum claimed shall be less than three hundred dollars."

SEC. 1942. The members of the Legislative Assemblies of New Mexico, Utah, Washington, Colorado, Dakota, Arizona, and Wyoming Territories shall each receive three dollars for every twenty miles' travel in going to and returning from the sessions of their respective bodies, estimated according to the nearest usually traveled route.

SEC. 1944. The seat of government of the Territories of New Mexico, Utah, Washington, Colorado, Dakota, Arizona, and Wyoming may be changed by the governors and Legislative Assemblies thereof, respectively.

SEC. 1946. Sections numbered sixteen and thirty-six, in each township of the Territories of New Mexico, Utah, Colorado, Dakota, Arizona, Idaho, Montana, and Wyoming, shall be reserved for the purpose of being applied to schools in the several Territories herein named, and in the States and Territories hereafter to be erected out of the same.

SEC. 1953. The libraries hereafter purchased by appropriations of Congress for the Territories of Utah and Washington shall be kept at the respective seats of government of those Territories for the use of the governor, Legislative Assembly, judges of the supreme court, secretary, marshal, and attorney of each Territory, and such other persons and under such regulations as may be prescribed by law.

ACTS OF CONGRESS

CONTAINING PROVISIONS

APPLICABLE TO THE TERRITORY OF UTAH.

PASSED SUBSEQUENT TO THE REVISED STATUTES.

AN ACT CONCERNING THE PRACTICE IN TERRITORIAL COURTS, AND APPEALS THEREFROM.

[Approved April 7, 1874.]

SECTION.
1. Preamble, common law, and chancery jurisdiction of Territorial courts. Certain codes, rules of practice and proceedings confirmed. Trial by jury.

SECTION.
2. Appellate jurisdiction of supreme court of United States, how exercised. Proceedings on appeal. Proviso.

Preamble.

Whereas, by the organic acts establishing several of the Territories of the United States, it is provided that certain courts thereof shall have common law and chancery jurisdiction, and doubts have been entertained whether said jurisdictions must be exercised separately, or whether they may be exercised together in the same proceeding, and whether the codes and rules of practice adopted in said Territories which have authorized a mingling of said jurisdictions in the same proceeding, or a uniform course of proceeding in all cases legal and equitable, are repugnant to the said organic acts respectively: Therefore,

Common law and chancery jurisdiction of Territorial courts.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall not be necessary in any of the courts of the several Territories of the United States to exercise separately the common law and chancery jurisdictions vested in said courts; and that the several codes and rules of practice adopted in said Territories respectively, in so far as they authorize a mingling of said jurisdictions or a uniform course of proceeding in all cases whether legal or equitable, be confirmed; and that all proceedings heretofore had or taken in said courts in conformity with said respective codes and rules of practice, so far as relates to the form and mode

Certain codes, rules of practice, and proceedings confirmed.

of proceeding, be, and the same are hereby, validated and confirmed: *Provided*, That no party has been or shall be deprived of the right of trial by jury in cases cognizable at common law.

Trial by jury.

Appellate jurisdiction of supreme court of United States, how exercised.

SEC. 2. That the appellate jurisdiction of the Supreme Court of the United States over the judgments and decrees of said Territorial courts in cases of trial by jury shall be exercised by writ of error, and in all other cases by appeal according to such rules and regulations as to form and modes of proceeding as the said Supreme Court have prescribed or may hereafter prescribe: *Provided*, That on appeal, instead of the evidence at large, a statement of the facts of the case in the nature of a special verdict, and also the rulings of the court on the admission or rejection of evidence when excepted to, shall be made and certified by the court below, and transmitted to the Supreme Court together with the transcript of the proceedings and judgment or decree; but no appellate proceedings in said Supreme Court, heretofore taken upon any such judgment or decree, shall be invalidated by reason of being instituted by writ of error or by appeal: *And provided further*, That the appellate court may make any order in any case heretofore appealed, which may be necessary to save the rights of the parties; and that this act shall not apply to cases now pending in the Supreme Court of the United States where the record has already been filed.

Proceedings on appeal.

Proviso.

AN ACT

IN RELATION TO COURTS AND JUDICIAL OFFICERS IN THE TERRITORY OF UTAH.

[Approved June 23rd, 1874.]

SECTION.

1. United States marshal of Utah Territory to attend all sessions of supreme and district courts, &c. Service of process. Mileage. Appointment and anthority of deputies. Liability of marshals for their official acts. Deputies to give bond. Oath. Appointment, bond, and oath to be filed. Actions for mis-feasance or non-feasance of deputy. Authority of sheriffs.
2. United States attorney to attend all courts of record. To perform duties of prosecuting officer in all criminal cases. May appoint assistants. Oath. Appointment and oath to be filed. Fees. Prosecuting attorney may be elected in any county. Authority under Territorial laws. When prosecution is carried to district court. Costs, &c., of prosecutions, how paid.
3. Terms of supreme and district courts. Jurisdiction of district courts. Probate courts. Jurisdiction. Removal of divorce cases to district courts. Authority of probate courts to enter land in trust not impaired. Certain judgments and decrees confirmed. Jurisdiction of justices of the peace extended. Appeals to district courts. Appeal from probate courts. Proceedings on such appeal. Appeal in prior cases. Writ of error from Supreme Court of United States in certain cases. Judge of any district may request judge of any other district to assist him.
4. Jury list for grand and petit juries, when and how prepared. Certification and filing of list. When jury to be drawn public notice to be given. Judge to hold open session of court and preside at drawing. Writs of venire, how issued and served. Names drawn not to be returned to jury-box until when. Additional jurors, how drawn. Challenges. In criminal cases punishment how pronounced. Grand jury, duties and powers.
5. Notaries public. Acts of Legislative Assembly approved except, &c. Proviso.
6. Supreme court may appoint commissioners. Authority and powers.
7. Act of Territorial Legislature in relation to marshals and attorneys, and inconsistent laws disapproved. Fees of clerks, marshals and attorneys. Limit of salary of district attorney.

United States marshal of Utah Territory to attend all sessions of supreme and district courts, &c.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be the duty of the United States marshal of the Territory of Utah, in person or by deputy, to attend all sessions of the supreme and district courts in said Territory, and to serve and execute all process and writs issued out of, and all orders, judgments, and decrees made by, said courts, or by any judge thereof, unless said court or judge shall otherwise order in any particular case. All process, writs, or other papers left with said marshal, or either of his deputies, shall be served without delay, and in the order in

Service of process.

Mileage.

Appointment and authority of deputies.

Liability of marshal for their official acts.

Deputies to give bond.

Oath.

Appointment, bond, and oath to be filed.

Actions for mis-feasance or non-feasance of deputy.

Authority of sheriffs.

which they are received, upon payment or tender of his legal fees therefor; and it shall be unlawful for said marshal to demand or receive mileage for any greater distance than the actual distance by the usual routes from the place of service or execution of process, writ, or other paper, to the place of return of the same, except that when it shall be necessary to convey any person arrested by legal authority out of the county in which he is arrested, said marshal shall be entitled to mileage for the whole distance necessarily traveled in delivering the person so arrested before the court or officer ordering such arrest. Said marshal is hereby authorized to appoint as many deputies as may be necessary, each of whom shall have authority, in the name of said marshal, to perform any act with like effect and in like manner as said marshal; and the marshal shall be liable for all official acts of such deputies, as if done by himself. Such appointment shall not be complete until he shall give bond to said marshal, with sureties, to be by him approved, in the penal sum of ten thousand dollars, conditioned for the faithful discharge of his duties; and he shall also take and subscribe the same oath prescribed by law to be taken by said marshal, and said appointment, bond and oath shall be filed and remain in the office of the clerk of the supreme court of said Territory. In actions brought against said marshal for the mis-feasance or non-feasance of any deputy it shall be lawful for the plaintiff at his option, to join the said deputy and the sureties on his bond with said marshal and his sureties. Any process either civil or criminal returnable to the supreme or district courts, may be served in any county, by the sheriff thereof or his legal deputy, and they may also serve any other process which may be authorized by act of the Territorial Legislature.

United States attorney to attend all courts of record.

To perform duties of prosecuting officer in all criminal cases.

May appoint assistants.

Oath.

Appointment and oath to be filed.

Fees.

SEC. 2. That it shall be the duty of the United States attorney in said Territory in person or by an assistant, to attend all the courts of record having jurisdiction of offenses as well under the laws of said Territory as of the United States, and perform the duties of prosecuting officer in all criminal cases arising in said courts, and he is hereby authorized to appoint as many assistants as may be necessary, each of whom shall subscribe the same oath as is prescribed by law for said United States attorney and the said appointment and oath shall be filed and remain in the office of the clerk of the supreme court of said Territory. The United States attorney shall be entitled to the same fees for services rendered by said assistants as he would be entitled to for the same services if rendered by himself. The Territorial Legislature may provide for the election of a prosecuting attorney in any county; and such attorney, if authorized so to do by such Legislature, may commence prosecutions for offenses under the laws of the Territory within such county, and if such prosecution is carried to the district court by recognizance or appeal, or otherwise may aid in conducting the prosecution in such court. And the costs and expenses of all prosecutions for offenses against any law of the Territorial Legislature shall be paid out of the treasury of the Territory.

Prosecuting attorney may be elected in any county.

Authority under Territorial laws.

When prosecution is carried to district court.

Costs, etc., of prosecutions, how paid.

Terms of supreme and district courts.

Jurisdiction of district courts.

Probate courts, jurisdiction.

Removal of divorce cases to district court.

Authority of probate courts to enter land in trust not impaired.

SEC. 3. That there shall be held in each year two terms of the supreme court of said Territory, and four terms of each district court, at such times as the governor of the Territory may by proclamation fix. The district courts shall have exclusive original jurisdiction in all suits or proceedings in chancery, and in all actions at law in which the sum or value of the thing in controversy shall be three hundred dollars or upward, and in all controversies where the title, possession or boundaries of land, or mines or mining claims shall be in dispute, whatever their value, except in actions for forcible entry or forcible and unlawful detainer; and they shall have jurisdiction in suits for divorce. Probate courts, in their respective counties shall have jurisdiction in the settlement of the estates of decedents, and in matters of guardianship and other like matters; but otherwise they shall have no civil, chancery, or criminal jurisdiction whatever; they shall have jurisdiction of suits of divorce for statutory causes concurrently with the district courts; but any defendant in a suit for divorce commenced in a probate court shall be entitled after appearance and before plea or answer, to have said suit removed to the district court having jurisdiction, when said suit shall proceed in like manner as if originally commenced in said district court. Nothing in this act shall be construed to impair the authority of the probate courts to enter land in trust for the use and benefit of the occupants of towns in the various counties of the Territory of Utah, according to the provisions of "An act for the relief of the inhabitants of cities and towns upon public lands," approved March second, eighteen hundred and sixty-seven, and "An act to amend an act entitled 'An act for the relief of the inhabitants of cities and towns upon the public lands,'" approved June eighth, eighteen hundred and sixty-eight; or to discharge the duties assigned to the probate judges by an act of the Legislative Assembly of the Territory of Utah, entitled "An act prescribing rules and regulations for the execution of the trust arising under an act of Congress entitled 'An act for the relief of the inhabitants of cities and towns upon the public lands.'" All judgments and decrees heretofore rendered by the probate courts which have been executed, and the time to appeal from which has by the existing laws of said Territory expired, are hereby validated and confirmed. The jurisdiction heretofore conferred upon justices of the peace by the Organic Act of said Territory is extended to all cases where the debt or sum claimed shall be less than three hundred dollars. From all final judgments of justices of the peace an appeal shall be allowed to the district courts of their respective districts, in the same manner as is now provided by the laws of said Territory for appeals to the probate courts; and from the judgments of the probate courts an appeal shall lie to the district court of the district embracing the county in which such probate court is held in such cases and in such manner as the supreme court of said Territory may, by general rules framed for that purpose, specify and designate, and such appeal shall vacate the judgment appealed from, and the case shall be tried *de novo* in the appellate court. Appeals may be taken from both justices' and probate courts to the district court of their respective districts in cases where judgments have been heretofore rendered and remain unexecuted; but this provision shall not enlarge the time for taking an appeal beyond the periods now allowed by the existing laws of said Territory for taking appeals. A writ of error from the Supreme Court of the United States to the supreme court of the Territory shall lie in criminal cases, where the accused shall have been sentenced to capital punishment or convicted of bigamy or polygamy. Whenever the condition of the business in the district court of any district is such that the judge of the district is unable to do the same, he may request the judge of either of the other districts to assist him, and, upon such request made, the judge so requested may hold the whole or part of any term, or any branch thereof, and his acts as judge shall be of equal force as if he were duly assigned to hold the courts in such district.

Certain judgments and decrees confirmed.

Jurisdiction of justices of the peace extended.

Appeals to district court.

Appeals from probate courts: proceedings on such appeal.

Appeals in prior cases.

Writ of error from Supreme Court of United States in certain cases.

SEC. 4. That within sixty days after the passage of this act, and in the month of January annually thereafter, the clerk of the district court in each judicial district, and the judge of probate of the county in which the district court is next to be held, shall prepare a jury-list from which grand and petit jurors shall be drawn, to serve in the district courts, of such district, until a new list shall be made as herein provided. Said clerk and probate judge shall alternately select the name of a male citizen of the United States who has resided in the district for the period of six months next preceding, and who can read and write in the English language; and, as selected, the name and residence of each shall be entered upon the list, until the same shall contain two hundred names, when the same shall be duly certified by such clerk and probate judge; and the same shall be filed in the office of the clerk of such district court, and a duplicate copy shall be made and certified by such officers, and filed in the office of said probate judge. Whenever a grand or petit jury is to be drawn to serve at any term of a district court, the judge of such district shall give public notice of the time and place of the drawing of such jury, which shall be at least twelve days before the commencement of such term; and on the day and at the place thus fixed, the judge of such district shall hold an open session of his court, and shall preside at the drawing of such jury; and the clerk of such court shall write the name of each person on the jury lists returned and filed in his office upon a separate slip of paper, as nearly as practicable of the same size and form, and all such slips shall, by the clerk in open court, be placed in a covered box, and thoroughly mixed and mingled; and thereupon the United States marshal, or his deputy, shall proceed to fairly draw by lot from said box such number of names as may have previously been directed by said judge; and if both a grand and petit jury are to be drawn, the grand jury shall be drawn first; and when the drawing shall have been concluded, the clerk of the district court shall issue a *venire* to the marshal or his deputy, directing him to summon the persons so drawn, and the same shall be duly served on each of the persons so drawn at least seven days before the commencement of the term at which they are to serve; and the jurors so drawn and summoned shall constitute the regular grand and petit juries for the term for all cases. And the names thus drawn from the box by the clerk shall not be returned to or again placed in said box until a new jury list shall be made. If during any term of the district court any addi-

Jury list for grand and petit jury, how and when prepared.

Selection of names.

Qualification of jurors.

List to contain two hundred names.

Certification and filing of list.

When jury to be drawn public notice to be given.

Judge to hold open session of court and preside at drawing.

Method of drawing.

Writs of venire, how issued and served.

Regular juries, how constituted.

Names drawn not to be returned to jury box until when.

Additional jurors, how drawn.

tional grand or petit jurors shall be necessary, the same shall be drawn from said box by the United States Marshal in open court; but if the attendance of those drawn cannot be obtained in a reasonable time, other names may be drawn in the same manner. Each party, whether in civil or criminal cases, shall be allowed three peremptory challenges except in capital cases, where the prosecution and the defense shall each be allowed fifteen challenges. In criminal cases, the court, and not the jury, shall pronounce the punishment under the limitation prescribed by law. The grand jury must inquire into the case of every person imprisoned within the district on a criminal charge and not indicted; into the condition and management of the public prisons within the district; and into the wilful, corrupt misconduct in office of public officers of every description within the district; and they are also entitled to free access, at all reasonable times, to the public prisons, and to the examination, without charge, of all public records within the district.

Challenges.

In criminal cases, punishment how pronounced.

Grand jury, duties and powers.

Notaries public.

Sec. 5. That there shall be appointed by the governor of said Territory one or more notaries public for each organized county, whose term of office shall be two years, and until their successors shall be appointed and qualified. The act of the Legislative Assembly of the Territory of Utah entitled "An act concerning notaries public," approved January seventeenth, eighteen hundred and sixty-six, is hereby approved, except the first section thereof, which is hereby disapproved: *Provided,* That wherever, in said act, the words "probate judge" or "clerk of the probate court" are used, the words "secretary of the Territory" shall be substituted.

Acts of Legislative Assembly approved, except, etc.

Proviso.

Supreme court may appoint commissioners.

Sec. 6. That the supreme court of said Territory is hereby authorized to appoint commissioners of said court, who shall have and exercise all the duties of commissioners of the circuit courts of the United States, and to take acknowledgments of bail; and, in addition, they shall have the same authority as examining and committing magistrates in all cases arising under the laws of said Territory as is now possessed by justices of the peace in said Territory.

Authority and powers.

Acts of Territorial Legislative Assembly disapproved.

Sec. 7. That the act of the Territorial Legislature of the Territory of Utah entitled "An act in relation to marshals and attorneys," approved March third, eighteen hundred and fifty-two, and all laws of said Territory inconsistent with the provisions of this act, are hereby disapproved. The act of the Congress of the United States entitled "An act to regulate the fees and costs to be allowed clerks, marshals, and attorneys of the circuit and district courts of the United States, and for other purposes," approved February twenty-sixth, eighteen hundred and fifty-three, is extended over and shall apply to the fees of like officers in said Territory of Utah. But the district attorney shall not by fees and salary together receive more than thirty-five hundred dollars per year; and all fees or moneys received by him above said amount shall be paid into the Treasury of the United States.

Fees of clerks, marshals and attorneys.

NATURALIZATION OF ALIENS.

[Revised Statutes of the United States, Page 380.]

SECTION.
2165. Aliens, how naturalized.
2166. Aliens honorably discharged from military service.
2167. Minor residents.
2168. Widow and children of declarants.
2169. Aliens of African nativity and descent.
2170. Residence of five years in United States.

SECTION.
2171. Alien enemies not admitted.
2172. Children of persons naturalized under certain laws to be citizens.
2173. Police court of District of Columbia has no power to naturalize foreigners.
2174. Naturalization of seamen.

SEC. 2165. An alien may be admitted to become a citizen of the United States in the following manner, and not otherwise:

First. He shall declare on oath, before a circuit or district court of the United States, or a district or supreme court of the Territories, or a court of record of any of the States having common-law jurisdiction, and a seal and clerk, two years, at least, prior to his admission, that it is *bona fide*, his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and, particularly, by name, to the prince, potentate, state or sovereignty, of which the alien may be at the time a citizen or subject.

Second. He shall, at the time of his application to be admitted, declare, on oath, before some one of the courts above specified, that he will support the Constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to every foreign prince, potentate, state, or sovereignty; and, particularly, by name, to the prince, potentate, state, or sovereignty of which he was before a citizen or subject; which proceedings shall be recorded by the clerk of the court.

Third. It shall be made to appear to the satisfaction of the court admitting such alien that he has resided within the United States five years at least, and within the State or Territory where such court is at the time held, one year at least; and that during that time he has behaved as a man of a good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same; but the oath of the applicant shall in no case be allowed to prove his residence.

Fourth. In case the alien applying to be admitted to citizenship has borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came, he shall, in addition to the above requisites, make an express renunciation of his title or order of nobility in the court to which his application is made, and his renunciation shall be recorded in the court.

Fifth. Any alien who was residing within the limits and under the jurisdiction of the United States before the twenty ninth day of January, one thousand seven hundred and ninety-five, may be admitted to become a citizen, on due proof made to some one of the courts above specified, that he has resided two years, at least, within the jurisdiction of the United States, and one year, at least, immediately preceding his application, within the State or Territory where such court is at the time held; and on his declaring on oath that he will support the Constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, and, particularly, by name, to the prince, potentate, state or sovereignty whereof he was before a citizen or subject; and, also, on its appearing to the satisfaction of the court, that during such term of two years he has behaved as a man of good moral character, attached to the Constitution of the United States, and well disposed to the good order and happiness of the same; and where the alien, applying for admission to citizenship, has borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came, on his, moreover, making in the court an express renunciation of his title or order of nobility. All of the proceedings, required in this condition to be performed in the court, shall be recorded by the clerk thereof.

Sixth. Any alien who was residing within the limits and under the jurisdiction of the United States, between the eighteenth day of June, one thousand seven hundred and ninety-eight, and the eighteenth day of June, one thousand eight hundred and twelve, and who has continued to reside within the same, may be admitted to become a citizen of the United States without having made any previous declaration of his intention to become such; but whenever any person, without a certificate of such declaration of intention, makes application to be admitted a citizen, it must be proved to the satisfaction of the court, that the applicant was residing within the limits and under the jurisdiction of the United States before the eighteenth day of June, one thousand eight hundred and twelve, and has continued to reside within the same; and the residence of the applicant within the limits and under the jurisdiction of the United States, for at least five years immediately preceding the time of such application, must be proved by the oath of citizens of the United States, which citizens shall be named in the record as witnesses; and such continued residence within the limits and under the jurisdiction of the United States, when satisfactorily proved, and the place where the applicant has resided for at least five years, shall be stated and set forth, together with the names of such citizens, in the record of the court admitting the applicant; otherwise the same shall not entitle him to be considered and deemed a citizen of the United States.

SEC. 2166. Any alien, of the age of twenty-one years and upward, who has enlisted, or may enlist, in the armies of the United States, either the regular or the volunteer forces, and has been, or may be hereafter, honorably discharged, shall be admitted to become a citizen of the United States, upon his petition, without any previous declaration of his intention to become such; and he shall not be required to prove more than one year's residence within the United States previous to his application to become such citizen; and the court admitting such alien shall, in addition to such proof of residence and good moral character, as now provided by law, be satisfied by competent proof of such person's having been honorably discharged from the service of the United States.

SEC. 2167. Any alien, being under the age of twenty-one years, who has resided in the United States three years next preceding his arriving at that age, and who has continued to reside therein to the time he may make application to be admitted a citizen thereof, may, after he arrives at the age of twenty-one years, and after he has resided five years within the United States, including the three years of his minority, be admitted a citizen of the United States, without having made the declaration required in the first condition of section twenty-one hundred and sixty-five; but such alien shall make the declaration required therein at the time of his admission; and shall further declare, on oath, and prove to the satisfaction of the court, that, for two years next preceding, it has been his *bona fide* intention to become a citizen of the United States; and he shall in all other respects comply with the laws in regard to naturalization.

SEC. 2168. When any alien, who has complied with the first condition specified in section twenty-one hundred and sixty-five, dies before he is actually naturalized, the widow and the children of such alien shall be considered as citizens of the United States, and shall be entitled to all rights and privileges as such, upon taking the oaths proscribed (1) by law.

SEC. 2169. The provisions of this title shall apply to aliens, being free white persons, and to aliens of African nativity and to persons of African descent. (2)

SEC. 2170. No alien shall be admitted to become a citizen who has not for the continued term of five years next preceding his admission resided within the United States.

SEC. 2171. No alien who is a native citizen or subject, or a denizen of any country, state, or sovereignty with which the United States are at war, at the time of his application, shall be then admitted to become a citizen of the United States; but persons resident within the United States, or the Territories thereof, on the eighteenth day of June, in the year one thousand eight hundred and twelve, who had before that day made a declaration, according to law, of their intention to become citizens of the United States, or who were on that day entitled to become citizens without making such declaration, may be admitted to become citizens thereof, notwithstanding they were alien enemies at the time and in the manner prescribed by the laws heretofore passed on that subject; nor shall anything herein contained be taken or construed to interfere with or prevent the apprehension and removal, agreeably to law, of any alien enemy at any time previous to the actual naturalization of such alien.

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(1) Error in the roll; should be *prescribed*.

(2) As amended. See appendix to U. S. Revised Statutes, p. 1435.

SEC. 2172. The children of persons who have been duly naturalized under any law of the United States, or who, previous to the passing of any law on that subject, by the government of the United States, may have become citizens of any one of the States, under the laws thereof, being under the age of twenty-one years at the time of the naturalization of their parents, shall, if dwelling in the United States, be considered as citizens thereof; and the children of persons who now are, or have been citizens of the United States, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens thereof; but no person heretofore proscribed by any State, or who has been legally convicted of having joined the army of Great Britain during the Revolutionary war, shall be admitted to become a citizen without the consent of the Legislature of the State in which such person was proscribed.

SEC. 2173. The police court of the District of Columbia shall have no power to naturalize foreigners.

SEC. 2174. Every seaman, being a foreigner, who declares his intention of becoming a citizen of the United States in any competent court, and shall have served three years on board of a merchant vessel of the United States subsequent to the date of such declaration, may, on his application to any competent court, and the production of his certificate of discharge and good conduct during that time, together with the certificate of his declaration of intention to become a citizen, be admitted a citizen of the United States; and every seaman, being a foreigner, shall, after his declaration of intention to become a citizen of the United States, and after he shall have served such three years, be deemed a citizen of the United States for the purpose of manning and serving on board any merchant vessel of the United States, anything to the contrary in any act of Congress notwithstanding; but such seaman shall, for all purposes of protection as an American citizen, be deemed such, after the filing of his declaration of intention to become such citizen.

MINERAL LANDS

AND

MINING RESOURCES.

[U. S. Revised Statutes, p. 427.]

Mineral lands reserved.

4 July 1866, c. 166, s. 5, v. 14, p. 86.

SEC. 2318. In all cases lands valuable for minerals shall be reserved from sale, except as otherwise expressly directed by law.

Mineral lands open to purchase by citizens.

10 May, 1872, c. 152, s. 1, v. 17, p. 91.

SEC. 2319. All valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by law, and according to the local customs or rules of miners, in the several mining districts, so far as the same are applicable and not inconsistent with the laws of the United States.

Length of mining claims upon vein or lodes.

SEC. 2320. Mining claims upon veins or lodes of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits heretofore located, shall be governed as to length along the vein or lode by the customs, regulations, and laws in force at the date of their location. A mining claim located after the tenth day of May, eighteen hundred and seventy-two, whether located by one or more persons, may equal, but shall not exceed, one thousand five hundred feet in length along the vein or lode; but no location of a mining claim shall be made until the discovery of the vein or lode within the limits of the claim located. No claim shall extend more than three hundred feet on each side of the middle of the vein at the surface, nor shall any claim be limited by any mining regulation to less than twenty-five feet on each side of the middle of the vein at the surface, except where adverse rights existing on the 10th day of May, eighteen hundred and

10 May, 1872, c. 152 s. 2, v. 17, p. 91.

seventy-two, render such limitation necessary. The end lines of each claim shall be parallel to each other.

Proof of citizenship.

SEC. 2321. Proof of citizenship, under this chapter, may consist, in the case of an individual, of his affidavit thereof; in the case of an association of persons unincorporated, of the affidavit of their authorized agent, made on his own knowledge, or upon information and belief; and in the case of a corporation organized under the laws of the United States, or of any State or Territory thereof, by the filing of a certified copy of their charter or certificate of incorporation.

10 May, 1872, c. 152, s. 7, v. 17, p. 94.

Locators' rights of possession and enjoyment.

SEC. 2322. The locators of all mining locations heretofore made or which shall hereafter be made, on any mineral vein, lode, or ledge, situated on the public domain, their heirs and assigns, where no adverse claim exists on the tenth day of May, eighteen hundred and seventy-two, so long as they comply with the laws of the United States, and with State, Territorial, and local regulations not in conflict with the laws of the United States governing their possessory title, shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and of all veins, lodes, and ledges throughout their entire depth, the top or apex of which lies inside of such surface lines extended downward vertically, although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical sidelines of such surface locations. But the right of possession to such outside parts of such veins or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward as above described, through the end lines of their locations, so continued in their own direction that such planes will intersect such exterior parts of such veins or ledges. And nothing in this section shall authorize the locator or possessor of a vein or lode which extends in its downward course beyond the vertical lines of his claim to enter upon the surface of a claim owned or possessed by another.

10 May, 1872, c. 152, s. 3, v. 17, p. 91.

Owners of tunnels, rights of.

SEC. 2323. Where a tunnel is run for the development of a vein or lode, or for the discovery of mines, the owners of such tunnel shall have the right of possession of all veins or lodes within three thousand feet from the face of such tunnel on the line thereof, not previously known to exist, discovered in such tunnel, to the same extent as if discovered from the surface; and locations on the line of such tunnel of veins or lodes not appearing on the surface,

10 May, 1872, c. 152, s. 4, v. 17, p. 92.

made by other parties after the commencement of the tunnel, and while the same is being prosecuted with reasonable diligence, shall be invalid; but failure to prosecute the work on the tunnel for six months shall be considered as an abandonment of the right to all undiscovered veins on the line of said tunnel.

Regulations made by miners.

10 May, 1872, c. 152, s. 5, v. 17, p. 92.

SEC. 2324. The miners of each mining district may make regulations not in conflict with the laws of the United States, or with the laws of the State or Territory in which the district is situated, governing the location, manner of recording, amount of work necessary to hold possession of a mining claim, subject to the following requirements: The location must be distinctly marked on the ground so that its boundaries can be readily traced. All records of mining claims hereafter made shall contain the name or names of the locators, the date of the location, and such a description of the claim or claims located by reference to some natural object or permanent monument as will identify the claim. On each claim located after the tenth day of May, eighteen hundred and seventy-two, and until a patent has been issued therefor, not less than one hundred dollars' worth of labor shall be performed or improvements made during each year. On all claims located prior to the tenth day of May, eighteen hundred and seventy-two, ten dollars' worth of labor shall be performed or improvements made by the tenth day of June, eighteen hundred and seventy-four, and each year thereafter, for each one hundred feet in length along the vein until a patent has been issued therefor; but where such claims are held in common such expenditure may be made upon any one claim; and upon a failure to comply with these conditions, the claim or mine upon which such failure occurred shall be open to re-location in the same manner as if no location of the same had ever been made: *Provided*, That the original locators, their heirs, assigns, or legal representatives, have not resumed work upon the claim after failure and before such location. Upon the failure of any one of several co-owners to contribute his proportion of the expenditures required hereby, the co-owners who have performed the labor or made the improvements may, at the expiration of the year, give such delinquent co-owner personal notice in writing or notice by publication in the newspaper published nearest the claim, for at least once a week for ninety days, and if at the expiration of ninety days after such notice in writing or by publication such delinquent should fail or refuse to contribute his proportion of the expenditure required by this section, his interest in the claim shall become the property of his co-owners who have made the required expenditures.

Patents for mineral lands, how obtained.

10 May, 1872, c. 152, s. 6, v. 17, p. 92.

SEC. 2325. A patent for any land claimed and located for valuable deposits may be obtained in the following manner: Any person, association, or corporation authorized to locate a claim under this chapter, having claimed and located a piece of land for such purpose, who has, or have, complied with the terms of this chapter, may file in the proper land office an application for a patent, under oath, showing such compliance, together with a plat and field notes of the claim or claims in common, made by or under the direction of the United States surveyor general, showing accurately the boundaries of the claim or claims, which shall be distinctly marked by monuments on the ground, and shall post a copy of such plat, together with a notice of such application for a patent, in a conspicuous place on the land embraced in such plat previous to the filing of the application for a patent, and shall file an affidavit of at least two persons that such notice has been duly posted, and shall file a copy of the notice in such land office, and shall thereupon be entitled to a patent for the land, in the manner following: The register of the land office, upon the filing of such application, plat, field notes, notices, and affidavits, shall publish a notice that such application has been made, for the period of sixty days, in a newspaper to be by him designated as published nearest to such claim; and he shall also post such notice in his office for the same period. The claimant at the time of filing this application, or at any time thereafter, within the sixty days of publication, shall file with the register a certificate of the United States surveyor general that five hundred dollars' worth of labor has been expended or improvements made upon the claim by himself or grantors; that the plat is correct, with such further description by such reference to natural objects or permanent monuments as shall identify the claim, and furnish an accurate description, to be incorporated in the patent. At the expiration of the sixty days of publication the claimant shall file his affidavit, showing that the plat and notice have been posted in a conspicuous place on the claim during such period of publication. If no adverse claim shall have been filed with the register and the receiver of the proper land office at the expiration of the sixty days of publication it shall be assumed that the applicant is entitled to a patent, upon the payment to the proper officer of five dollars per acre, and that no adverse claim exists; and thereafter no objection from third parties to the issuance of a patent shall be heard, except it be shown that the applicant has failed to comply with the terms of this chapter.

Adverse claim, proceedings on.

10 May, 1872, c. 152, s. 7, v. 17, p. 93.

SEC. 2326. Where an adverse claim is filed during the period of publication, it shall be upon oath of the person or persons making the same, and shall show the nature, boundaries, and extent of such adverse claim, and all proceedings, except the publication of notice and making and filing of the affidavit thereof, shall be stayed until the controversy shall have been settled or decided by a court of competent jurisdiction, or the adverse claim waived. It shall be the duty of the adverse claimant, within thirty days after filing his claim, to commence proceedings in a court of competent jurisdiction, to determine the question of the right of possession, and prosecute the same with reasonable diligence to final judgment; and a failure so to do shall be a waiver of his adverse claim. After such judgment shall have been rendered, the party entitled to the possession of the claim, or any portion thereof, may, without giving further notice, file a certified copy of the judgment roll with the register of the land office, together with the certificate of the surveyor general that the requisite amount of labor has been expended, or improvements made thereon, and the description required in other cases, and shall pay to the receiver five dollars per acre for his claim, together with the proper fees, whereupon the whole proceedings and the judgment roll shall be certified by the register to the Commissioner of the General Land Office, and a patent shall issue thereon for the claim, or such portion thereof as the applicant shall appear, from the decision of the court, to rightly possess. If it appears, from the decision of the court, that several parties are entitled to separate and different portions of the claim, each party may pay for his portion of the claim, with the proper fees, and file the certificate and description by the surveyor general, whereupon the register shall certify the proceedings and judgment-roll to the Commissioner of the General Land Office, as in the preceding case, and patents shall issue to the several parties according to their respective rights. Nothing herein contained shall be construed to prevent the alienation of the title conveyed by a patent for a mining claim to any person whatever.

SEC. 2327. The description of vein or lode claims, upon surveyed lands, shall designate the location of the claim with reference to the lines of the public surveys, but need not conform therewith; but where a patent shall be issued for claims upon unsurveyed lands, the surveyor general, in extending the surveys, shall adjust the same to the boundaries of such patented claim, according to the plat or description thereof, but so as in no case to interfere with or change the location of any such patented claim.

Description of vein claims on surveyed and unsurveyed lands.

10 May, 1872, c. 152, s. 8, v. 17, p. 94.

SEC. 2328. Applications for patents for mining claims under former laws now pending may be prosecuted to a final decision in the General Land office; but in such cases where adverse rights are not affected thereby, patents may issue in pursuance of the provisions of this chapter; and all patents for mining claims upon veins or lodes heretofore issued shall convey all the rights and privileges conferred by this chapter where no adverse rights existed on the tenth day of May, eighteen hundred and seventy-two.

Pending applications; existing rights.

10 May, 1872, c. 152, s. 9, v. 17, p. 94.

SEC. 2329. Claims usually called "placers," including all forms of deposit, excepting veins of quartz, or other rock in place, shall be subject to entry and patent, under like circumstances and conditions, and upon similar proceedings, as are provided for vein or lode claims; but where the lands have been previously surveyed by the United States, the entry in its exterior limits shall conform to the legal subdivisions of the public lands.

Conformity of placer claims to surveys, limit of.

9 July, 1870, c. 235, s. 12, v. 16, p. 217.

SEC. 2330. Legal subdivisions of forty acres may be subdivided into ten acre tracts; and two or more persons or associations of persons, having contiguous claims of any size, although such claims may be less than ten acres each, may make joint entry thereof; but no location of a placer claim, made after the ninth day of July, eighteen hundred and seventy, shall exceed one hundred and sixty acres for any one person or association of persons, which location shall conform to the United States surveys; and nothing in this section contained shall defeat or impair any *bona fide* pre-emption or homestead claim upon agricultural lands, or authorize the sale of the improvements of any *bona fide* settler to any purchaser.

Subdivisions of ten acre tracts; maximum of placer locations.

9 July, 1870, c. 235, s. 12, v. 16, p. 217.

SEC. 2331. Where placer claims are upon surveyed lands, and conform to legal subdivisions, no further survey or plat shall be required, and all placer mining claims located after the tenth day of May, eighteen hundred and seventy-two, shall conform as near as practicable with the United

Conformity of placer claims to surveys, limitation of claims.

10 May, 1872, c. 152, s. 10, v. 17, p. 94.

States system of public land surveys, and the rectangular subdivisions of such surveys, and no such location shall include more than twenty acres for each individual claimant; but where placer claims cannot be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands; and where by the segregation of mineral land in any legal subdivision a quantity of agricultural land less than forty acres remains, such fractional portion of agricultural land may be entered by any party qualified by law, for homestead or pre-emption purposes.

What evidence of possession, &c., to establish a right to a patent.

9 July, 1870, c. 235, s. 13, v. 16, p. 217.

SEC. 2332. Where such person or association, they and their grantors, have held and worked their claims for a period equal to the time prescribed by the statute of limitation for mining claims of the State or Territory where the same may be situated, evidence of such possession and working of the claims for such period shall be sufficient to establish a right to a patent thereto under this chapter, in the absence of any adverse claim; but nothing in this chapter shall be deemed to impair any lien which may have attached in any way whatever to any mining claim or property thereto attached prior to the issuance of a patent.

Proceedings for patent for placer claims, &c.

10 May, 1872, c. 152, s. 11, v. 17, p. 94.

SEC. 2333. Where the same person, association, or corporation is in possession of a placer claim, and also a vein or lode included within the boundaries thereof, application shall be made for a patent for the placer claim, with the statement that it includes such vein or lode, and in such case a patent shall issue for the placer claim, subject to the provisions of this chapter, including such vein or lode, upon the payment of five dollars per acre for such vein or lode claim, and twenty-five feet of surface on each side thereof. The remainder of the placer claim, or any placer claim not embracing any vein or lode claim, shall be paid for at the rate of two dollars and fifty cents per acre, together with all costs of proceedings; and where a vein or lode, such as is described in section twenty-three hundred and twenty, is known to exist within the boundaries of a placer claim, an application for a patent for such placer claim, which does not include an application for the vein or lode claim, shall be construed as a conclusive declaration that the claimant of the placer claim has no right of possession of the vein or lode claim; but where the existence of a vein or lode in a placer claim is not known, a patent for the placer claim shall convey all valuable mineral and other deposits within the boundaries thereof.

Surveyor general to appoint surveyors of mining claims, &c.

10 May, 1872, c. 152, s. 12, v. 17, p. 95.

SEC. 2334. The surveyor general of the United States may appoint in each land district containing mineral lands as many competent surveyors as shall apply for appointment to survey mining claims. The expenses of the survey of vein or lode claims, and the survey and subdivision of placer claims into smaller quantities than one hundred and sixty acres, together with the cost of publication of notices, shall be paid by the applicants, and they shall be at liberty to obtain the same at the most reasonable rates, and they shall also be at liberty to employ any United States deputy surveyor to make the survey. The Commissioner of the General Land Office shall also have power to establish the maximum charges for surveys and publication of notices under this chapter; and, in case of excessive charges for publication, he may designate any newspaper published in a land district where mines are situated, for the publication of mining notices in such district, and fix the rates to be charged by such paper; and, to the end that the Commissioner may be fully informed on the subject, each applicant shall file with the register a sworn statement of all charges and fees paid by such applicant for publication and surveys, together with all fees and money paid the register and the receiver of the land office, which statement shall be transmitted, with the other papers in the case, to the Commissioner of the General Land Office.

Verification of affidavits, &c.

10 May, 1872, c. 152, s. 13, v. 17, p. 95.

SEC. 2335. All affidavits required to be made under this chapter may be verified before any officer authorized to administer oaths within the land district where the claims may be situated, and all testimony and proofs may be taken before any such officer, and, when duly certified by the officer taking the same, shall have the same force and effect as if taken before the register and receiver of the land office. In cases of contest as to the mineral or agricultural character of land, the testimony and proofs may be taken as herein provided, on personal notice of at least ten days to the opposing party; or if such party cannot be found, then by publication of at least once a week for thirty days in a newspaper, to be designated by the register of the land office as published nearest to the location of such land; and the register shall require proof that such notice has been given.

Where veins intersect, &c.

10 May, 1872, c. 152, s. 14, v. 17, p. 96

SEC. 2336. Where two or more veins intersect or cross each other, priority of title shall govern, and such prior location shall be entitled to all ore or mineral contained within the space of intersection: but the subsequent location shall have the right of way through the space of intersection for the purposes of the convenient working of the mine. And where two or more veins unite, the oldest or prior location shall take the vein below the point of union, including all the space of intersection.

Patents for non-mineral lands, &c.

10 May, 1872, c. 152, s. 15, v. 17, p. 96.

SEC. 2337. Where non-mineral land not contiguous to the vein or lode is used or occupied by the proprietor of such vein or lode for mining or milling purposes, such non-adjacent surface ground may be embraced and included in an application for a patent for such vein or lode, and the same may be patented therewith, subject to the same preliminary requirements as to survey and notice as are applicable to veins or lodes: but no location hereafter made of such non-adjacent land shall exceed five acres, and payment for the same must be made at the same rate as fixed by this chapter for the superficies of the lode. The owner of a quartz mill or reduction works, not owning a mine in connection therewith, may also receive a patent for his mill site, as provided in this section.

What conditions of sale may be made by local Legislature.

26 July, 1866, c. 262, s. 5, v. 14, p. 253.

SEC. 2338. As a condition of sale in the absence of necessary legislation by Congress, the local Legislature of any State or Territory may provide rules for working mines involving easements, drainage, and other necessary means to their complete development; and those conditions shall be fully expressed in the patent.

Vested rights to use of water for mining, &c.; right of way for canals.

26 July, 1866, c. 262, s. 9, v. 14, p. 253.

SEC. 2339. Whenever, by priority of possession, rights to the use of water for mining, agricultural, manufacturing, or other purposes, have vested and accrued, and the same are recognized and acknowledged by the local customs, laws, and the decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same; and the right of way for the construction of ditches and canals for the purposes herein specified is acknowledged and confirmed: but whenever any person, in the construction of any ditch or canal, injures, or damages, the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage.

Patents, pre-emption and homesteads subject to vested and accrued water rights.

9 July, 1870, c. 235, s. 17, v. 16, p. 218.

SEC. 2340. All patents granted, or pre-emption or homesteads allowed, shall be subject to any vested and accrued water rights, or rights to ditches and reservoirs used in connection with such water rights, as may have been acquired under or recognized by the preceding section.

SEC. 2341. Wherever, upon the lands heretofore designated as mineral lands, which have been excluded from survey and sale, there have been homesteads made by citizens of the United States, or persons who have declared their intention to become citizens, which homesteads have been made, improved, and used for agricultural purposes, and upon which there have been no valuable mines of gold, silver, cinnabar, or copper discovered, and which are properly agricultural lands, the settlers or owners of such homesteads shall have a right of pre-emption thereto, and shall be entitled to purchase the same at the price of one dollar and twenty-five cents per acre, and in quantity not to exceed one hundred and sixty acres; or they may avail themselves of the provisions of chapter five of this title, relating to "*Homesteads.*"

Mineral lands in which no valuable mines are discovered, open to homesteads.

26 July, 1866, c. 262, s. 10, v. 14, p. 253.

SEC. 2342. Upon the survey of the lands described in the preceding section, the Secretary of the Interior may designate and set apart such portions of the same as are clearly agricultural lands, which lands shall thereafter be subject to pre-emption and sale as other public lands, and be subject to all the laws and regulations applicable to the same.

Mineral lands, how set apart as agricultural lands.

26 July, 1866, c. 262, s. 11, v. 14, p. 253.

SEC. 2343. The President is authorized to establish additional land districts and to appoint the necessary officers under existing laws, wherever he may deem the same necessary for the public convenience in executing the provisions of this chapter.

Additional land districts and officers, power of the President to provide.

26 July, 1866, c. 262, s. 7, v. 14, p. 252.

SEC. 2344. Nothing contained in this chapter shall be construed to impair, in any way, rights or interests in mining property acquired under existing laws; nor to affect the provisions of the act entitled "An Act granting to A. Sutro the right of way and other privileges to aid in the construction of a draining and exploring tunnel to the Comstock lode, in the State of Nevada," approved July twenty-fifth, eighteen hundred and sixty-six.

Provisions of this chapter not to affect certain rights.

10 May, 1872, c. 152, s. 16, v. 17, p. 96.

9 July, 1870, c. 235, s. 17, v. 16, p. 218.

SEC. 2345. The provisions of the preceding sections of this chapter shall not apply to the mineral lands situated in the States of Michigan, Wisconsin, and Minnesota, which are declared free and open to exploration and purchase, according to legal subdivisions, in like manner as before the tenth day of May, eighteen hundred and seventy-two. And any *bona fide* entries of such lands within the States named since the tenth day of May, eighteen hundred and seventy-two, may be patented without reference to any of the foregoing provisions of this chapter. Such lands shall be offered

Mineral lands in certain States excepted.

18 Feb. 1873, c. 159, v. 17, p. 465.

for public sale in the same manner, at the same minimum price, and under the same rights of pre-emption as other public lands.

Grants of lands to States or corporations not to include mineral lands.

30 Jan., 1865, res. No. 10, v. 13, p. 567.

SEC. 2346. No act passed at the first session of the Thirty-eighth Congress, granting lands to States or corporations to aid in the construction of roads or for other purposes, or to extend the time of grants made prior to the thirtieth day of January, eighteen hundred and sixty-five, shall be so construed as to embrace mineral lands, which in all cases are reserved exclusively to the United States, unless otherwise specially provided in the act or acts making the grant.

Entry of coal lands.

3 March, 1873, c. 279, s. 1, v. 17, p. 607.

SEC. 2347. Every person above the age of twenty-one years, who is a citizen of the United States, or who has declared his intention to become such, or any association of persons severally qualified as above, shall, upon application to the register of the proper land office, have the right to enter, by legal subdivisions, any quantity of vacant coal lands of the United States not otherwise appropriated or reserved by competent authority, not exceeding one hundred and sixty acres to such individual person, or three hundred and twenty acres to such association, upon payment to the receiver of not less than ten dollars per acre for such lands, where the same shall be situated more than fifteen miles from any completed railroad, and not less than twenty dollars per acre for such lands as shall be within fifteen miles of such road.

Pre-emption of coal lands.

Ibid. s. 2.

SEC. 2348. Any person or association of persons severally qualified, as above provided, who have opened and improved, or shall hereafter open and improve, any coal mine or mines upon the public lands, and shall be in actual possession of the same, shall be entitled to a preference right of entry, under the preceding sections, of the mines so opened and improved: *Provided*, That when any association of not less than four persons, severally qualified as above provided, shall have expended not less than five thousand dollars in working and improving any such mine or mines, such association may enter not exceeding six hundred and forty acres, including such mining improvements.

Pre-emption claim of coal land to be presented within sixty days, &c.

Ibid. s. 3.

SEC. 2349. All claims under the preceding section must be presented to the register of the proper land district within sixty days after the date of actual possession and the commencement of improvements on the land, by the filing of a declaratory statement therefor; but when the township plat is not on file at the date of such improvement, filing must be made within sixty days from the receipt of such plat at the district office; and where the improvements shall have been made prior to the expiration of three months from the third day of March, eighteen hundred and seventy-three, sixty days from the expiration of such three months shall be allowed for the filing of a declaratory statement, and no sale under the provisions of this section shall be allowed until the expiration of six months from the third day of March, eighteen hundred and seventy-three.

SEC. 2350. The three preceding sections shall be held to authorize only one entry by the same person or association of persons; and no association of persons any member of which shall have taken the benefit of such sections either as an individual or as a member of any other association, shall enter or hold any other lands under the provisions thereof; and no member of any association which shall have taken the benefit of such sections shall enter or hold any other lands under their provisions; and all persons claiming under section twenty-three hundred and forty-eight, shall be required to prove their respective rights and pay for the lands filed upon within one year from the time prescribed for filing their respective claims; and upon failure to file the proper notice, or to pay for the land within the required period, the same shall be subject to entry by any other qualified applicant. Only one entry allowed. Ibid. s. 4.

SEC. 2351. In case of conflicting claims upon coal lands where the improvements shall be commenced, after the third day of March, eighteen hundred and seventy-three, priority of possession and improvement, followed by proper filing and continued good faith, shall determine the preference right to purchase. And also where improvements have already been made prior to the third day of March, eighteen hundred and seventy-three, division of the land claimed may be made by legal subdivisions, to include, as near as may be, the valuable improvements of the respective parties. The Commissioner of the General Land Office is authorized to issue all needful rules and regulations for carrying into effect the provisions of this and the four preceding sections. Conflicting claim. Ibid. s. 5.

SEC. 2352. Nothing in the five preceding sections shall be construed to destroy or impair any rights which may have attached prior to the third day of March, eighteen hundred and seventy-three, or to authorize the sale of lands valuable for mines of gold, silver, or copper. Rights reserved. Ibid. s. 6.

COMPILED LAWS.

THE

COMPILED LAWS

OF UTAH.

TITLE I.

OF THE STATUTES AND THE LEGISLATURE.

CHAPTER I. Of the Statutes.
CHAPTER II. Of the Legislature.

CHAPTER I.

OF THE STATUTES.

SECTION.
1. Of laws passed by provisional government of the State of Deseret.
2. Acts and resolutions, when in force.
3. Construing charters of incorporated cities.
4. Repeal not to revive a law previously repealed.
5. What certain words may include.
6. Word "seal" includes scroll.

Joint Resolution legalizing the laws of the Provisional Government of the State of Deseret.

[*Approved October* 4, 1851.]

Deseret laws legalized.

(1.) *Resolved, by the Legislative Assembly of the Territory of Utah:* That the laws heretofore passed by the provisional government of the State of Deseret, and which do not conflict with the "Organic Act," of said Territory, be, and the same are hereby declared to be legal, and in full force and virtue, and shall so remain until superseded by the action of the Legislative Assembly of the Territory of Utah.

An Act specifying the time when Acts and Resolutions begin to be in force and making them equally valid.

[*Approved January* 19, 1854.]

Laws in force from date of publication.

(2.) *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That each act and resolution is in force from the date of its publication in any public manner, unless a certain time is specified; and resolutions are equally valid with acts.

An Act amending the Charters of Incorporated Cities.

[*Approved February* 21, 1868.]

Construing charters of incorporated cities.

(3.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That no part of the charters of the incorporated cities in this Territory shall be construed to authorize a City Council to in any way license or tax any kind of gambling, either for money or other property, or to license or tax houses of ill fame, bawdy or other disorderly houses or places, but they shall prohibit and abate all such acts, houses and places as they are herein forbidden to tax or license.

An Act concerning the Laws of Utah.

[*Approved February* 20, 1874.]

Repeal of repealing statute.

(4.) *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That the repeal of a law shall not be construed to revive any law or part thereof, previously repealed by such law unless so revived in express terms. (1)

What certain words may include.

(5) SEC. 2. Words used in one tense may include either; the masculine the feminine; the singular the plural, and the plural the singular; "person" may include a partnership, corporation or company; "writing" may include printing, and "oath" include affirmation or declaration; "signature"

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(1) See sec. (1828.)

may include a mark with the person's name written near it, and witnessed by some person who can write; and where joint authority is given to three or more persons, such authority executed by a majority of such persons shall be valid, unless otherwise restricted in the law or instrument conferring such authority. (1)

Word "seal" includes scroll.

(6.) SEC. 3. The word "seal" may include a scroll, printed or written, opposite the signature.

CHAPTER II.

OF THE LEGISLATURE.

SECTION.
7. Establishing seat of government and place of holding supreme court.
8. Legislative Assembly, when to convene.
9. Members of Legislative Assembly exempt from arrest.
10. Each house of Assembly authorized to employ engrossing clerk.

SECTION.
11. Designating place of deposit of documents remaining at close of session.
12. Term of office of members of the House.
13. Term of office of members of the Council.
14. Officers elected by Assembly to be notified.

Resolution removing the Seat of Government and place of holding the Supreme Court.

[*Approved December* 15, 1856.]

Establishing seat of government, and place of holding supreme court.

(7.) *Be it resolved by the Governor and Legislative Assembly of the Territory of Utah:* That the Seat of Government is removed from Fillmore City to Salt Lake City, until otherwise provided by law. *And be it further resolved:* That the Supreme Court hold its annual sessions in Salt Lake City, so long as the Seat of Government remains at that place. (2)

An Act for convening the Legislative Assembly.

[*Approved February* 18, 1870.]

Legislative Assembly, when to convene.

(8.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That the Twentieth Session of the Legislative Assembly of the Territory of Utah, shall begin and be held in the City Hall, Salt Lake City, at 2 p.m., on the second Monday in January, eighteen hundred and seventy-two, and every two years thereafter: *Provided*, that if Congress shall at its present session authorize annual sessions, then the Twentieth Session shall begin and be held in the City Hall, Salt Lake City, on the second Monday in January, eighteen hundred and seventy-one, at 2 p.m.; and subsequent sessions shall commence annually thereafter on the second Monday in January, at two p.m.

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(1) See sec. (1815.)

(2) As amended by an act approved Jan. 29, 1868.

Resolution exempting the members of the Legislative Assembly of the Territory of Utah from arrest and summons during the sitting of the Legislature, and while going to and from the same.

[*Approved January* 14, 1857.]

Members of Legislative Assembly exempt from arrest, etc.

(9.) *Be it resolved by the Governor and Legislative Assembly of the Territory of Utah:* That the members of the Council and House of Representatives shall be privileged from arrest and summons during the sessions of the Legislative Assembly, or during the time of their going to and returning from said sessions, except for treason or murder; and no suit at law against any member shall be prosecuted during said sessions.

Resolution.

[*Approved December* 18, 1866.]

Each house authorized to employ engrossing clerk.

(10.) *Resolved by the Governor and Legislative Assembly of the Territory of Utah:* That the Council and House of Representatives each be authorized to employ an Engrossing Clerk.

Section 2 of an Act further defining the duties of the Librarian, Secretary of Council and Chief Clerk of House.

[*Approved February* 19, 1869.]

Designating place of deposit of documents, etc.

(11.) SEC. 2. The auditor's office is hereby designated as the place of deposit for all legislative papers which may be on the table at the end of each session; and the secretary of the Council and chief clerk of the House are hereby required to file and classify all such documents and deposit them with the auditor of public accounts.

An Act to provide for the election of the members of the Legislative Assembly of the Territory of Utah.

[*Approved February* 15, 1870.]

(12.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That the term of the members of the House of Representatives of the Territory of Utah, to be elected at the general election on the first Monday in August, eighteen hundred and seventy, shall be two years, and their election shall be biennially thereafter. **Biennial election.**

(13.) SEC. 2. That the term of the members of the Council of the Legislative Assembly of the Territory of Utah to be elected at the general election on the first Monday in August, eighteen hundred and seventy-one, shall be two years, and their election shall be biennially thereafter. **Biennial election.**

Resolution in relation to notifying persons elected to office by joint vote of the Assembly.

[*Approved February* 21, 1859.]

(14.) *Be it resolved by the Governor and Legislative Assembly of the Territory of Utah:* That it shall be the duty of the secretary of the Council and the chief clerk of the House to issue a certificate to each person elected by the joint vote of the Legislative Assembly, notifying them of the office to which they have been elected. **Who to notify officers elected by Assembly.**

TITLE II.

OF THE APPORTIONMENT OF MEMBERS OF THE LEGISLATIVE ASSEMBLY.

SECTION.
15. Apportionment of members of Council.
SECTION.
16. Apportionment of members of House.

An Act apportioning the Representation of Utah Territory. (1)

[*Approved January* 17, 1862.]

Apportionment of members of Council.

(15.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That at the general election on the first Monday in August, eighteen hundred and seventy-one, and biennially thereafter, Washington and Kane counties shall elect one councilor to the Legislative Assembly; Iron, Beaver and Piute counties one; Millard and Juab counties one; Sanpete and Sevier counties one; Utah and Wasatch counties two; Salt Lake, Tooele and Summit counties four; Davis and Morgan counties one; Weber and Box Elder counties one; and Cache and Rich counties one.

Apportionment of members of House.

(16.) SEC. 2. At the general election on the first Monday in August, eighteen hundred and seventy, and biennially thereafter, Washington and Kane counties shall elect one representative to the Legislative Assembly; Iron county one; Beaver and Piute counties one; Millard county one; Juab county one; Sanpete and Sevier counties two; Utah county three; Wasatch county one; Summit county one; Salt Lake county six; Tooele county one; Davis and Morgan counties two; Weber county two; Box Elder county one; and Cache and Rich counties two.

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(1) As amended by act of Feb. 15, 1870.

TITLE III

OF ELECTIONS: AND ELECTORS AND QUALIFICATIONS FOR HOLDING OFFICE.

CHAPTER I. Of elections.
CHAPTER II. Of electors and qualifications of officers.

CHAPTER I.

OF ELECTIONS.

SECTION.
17. General election, when held.
18. County clerk to give notice of officers to be chosen, and the time and place of holding election.
19. Who to be judge of election.
20. During what time election to be held. Where electors to vote.
21. How electors to vote.
22. Disposition of ballot box at close of election. Punishment for delaying returns.
23. County clerk and probate judge to canvass votes.
24. Abstract to be sent to secretary, and certificates furnished certain officers.
25. Canvass of returns by governor and secretary.
26. If returns delayed, county clerk or secretary to institute inquiry.

SECTION.
27. Duty of persons designing to contest election.
28. When ties occur how election determined.
29. Where contested election of county or precinct officers determined.
30. Vacancies, how filled.
31. Compensation of officers of election.
32. Election of delegate to Congress.
33. Canvass of votes.
34. Ballots not to be examined for any purpose other than to ascertain who has been elected.
35. Penalty for fraudulently voting or interfering with election.
36. Bribing, threatening or intimidating electors.
37. Challenges and how determined.

An Act regulating elections.

[*Approved January* 3, 1853.]

General election, when held.

(17.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That annually on the first Monday of August there shall be a general election held in each precinct in the several counties, for choosing all officers not otherwise provided for.

County clerks to give notice of officers to be chosen, etc.

(18.) SEC. 2. The County Clerk shall cause a notice ot the time and place, and the number and kind of officers to be chosen, to be put up in two public places in each precinct, at least six days before the time of election.

Who to be judge of election.

(19.) SEC. 3. The senior justice of the peace shall be the judge of elections in his precinct, and shall appoint one clerk, and furnish the necessary stationery and a ballot box; and, in the absence of a justice of the peace, the electors first assembled on the day of election, to the number of six, may appoint some suitable person to act as judge of that election.

What time election held, etc.

(20.) SEC. 4. The election shall be held from one hour after sunrise until sunset; and no elector shall vote in any precinct excepting where he resides.

How electors to vote.

(21.) SEC. 5. Each elector shall provide himself with a vote containing the names of the persons he wishes elected and the offices he would have them to fill, and present it neatly folded to the judge of the election, who shall number and deposit it in the ballot box; the clerk shall then write the name of the elector, and opposite it the number of his vote.

Disposition of ballot box at close of election.

Punishment for delaying returns.

(22.) SEC. 6. At the close of the election the judge shall seal up the ballot box and the list of the names of the electors, and transmit the same without delay to the county clerk. And if any returns are delayed by the negligence of the judge, beyond two days after said election, the judge so offending shall be fined, on conviction thereof, in any sum not exceeding fifty dollars, or be imprisoned not exceeding six months, or both. (1)

County clerk and probate judge to canvass votes.

(23.) SEC. 7. Immediately upon receiving the electoral returns of any precinct, the county clerk and probate judge, or, in his absence, one of the selectmen shall unseal the list and ballot box, and count and compare the votes with the names on the list, and make a brief abstract of the offices and names voted for, and the number of votes each person received; the ballot box shall then be returned, and the votes and list preserved for reference in case the election of any person shall be contested.

Abstract to be sent secretary, etc.

(24.) SEC. 8. When all the returns and abstracts are made the clerk shall forthwith make a general abstract and post it up in his office, and forward to the secretary of the Territory a certified copy of the names of the persons voted for, and the number of votes each has received for Territorial offices and furnish each person having the highest number of votes for county and precinct offices a certificate of his election.

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(1) Amendment of 18 Feb., 1876.

Canvass of returns, etc.

(25.) SEC. 9. So soon as all the returns are received, the secretary, in the presence of the governor, shall unseal and examine them, and furnish to each person having the highest number of votes for any Territorial office a certificate of his election.

Proceedings if returns delayed.

(26.) SEC. 10. If the returns are not made within a reasonable time, the secretary or county clerk, as the case may be, shall institute inquiry, which must be promptly responded to, and a new abstract furnished if necessary.

Proceedings if election contested.

(27.) SEC. 11. Any person designing to contest an election shall make his intentions specifically known in writing to the county clerk within ten days after the result of the election is known; in which case the clerk shall retain the votes and lists until the contest is decided; otherwise he shall destroy them.

How election determined if ties occur.

(28.) SEC. 12. When ties occur, if for a Territorial officer, the secretary shall determine the election by lot in the presence of the governor; and if for a county or precinct officer it shall in like manner be determined by the county clerk in the presence of the probate judge.

When contest determined.

(29.) SEC. 13. Any person contesting the election of a county or precinct officer shall proceed therein before the county court, who shall determine the question; all of which shall be done without delay.

Vacancies, how filled.

(30.) SEC. 14. When a vacancy occurs in Territorial elective offices, the governor shall order a special election to fill such vacancy; and should a vacancy occur in a county or precinct office, necessary to be filled previous to the general election, the county court shall fill such vacancy by appointment.

Compensation, etc.

(31.) SEC. 15. All officers acting in elections shall be allowed a reasonable compensation for their services, and shall be punished with a reasonable preventive amount of fine for fraud or negligence, by any court having jurisdiction.

An Act amendatory of and supplementary to "An Act regulating elections," approved January 3, 1853.

[*Approved February* 18, 1876.]

Election of delegate to Congress.

(32.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That in accordance with an act of Congress passed February 2, 1872, an election for Delegate to the Congress of the United States, for the Territory of Utah, shall be held in each precinct on the Tuesday next after the first Monday in November, in the year 1876, and every second year thereafter, said elections shall be held and returns made thereof as provided for in "An Act Regulating Elections," approved January 3, 1853, and all acts amendatory thereof or supplementary thereto.

Canvass of votes.

(33.) SEC. 2. So soon as the returns are in, the canvassing of votes shall commence, and shall be completed within two days after the reception of said returns, and all candidates voted for at any election may be present, either in person or by representative, to witness said canvass.

For what purpose ballots to be examined.

(34.) SEC. 3. It shall be unlawful for any judge or clerk of election, probate judge, clerk of a county court, selectman, or other person to examine any ballot offered or cast at the polls, or found in any ballot box, for any other purpose than to ascertain what candidate has been elected, and any person violating the provisions of this section, upon conviction thereof, shall be liable to a fine not exceeding two hundred dollars.

Penalty for fraudulently voting, etc.

(35.) SEC. 4. Any person who votes more than once at any one election, or knowingly offers to deposit two or more ballots, or changes any ballot after the same has been deposited in the ballot box, or after the election adds or attempts to add any ballot to those legally polled, shall, on conviction thereof, be fined in any sum not exceeding twenty dollars for each offense, and any person who carries away, or destroys, or attempts to carry away, or destroy any poll list or ballots, or ballot box, for the purpose of breaking up or invalidating such election, or who wilfully detains, mutilates or destroys any election returns, or in any manner so interferes with the officers holding such election, or conducting such canvass, or with the voters lawfully exercising their rights of voting at such election, as to prevent such election or canvass from being fairly held and lawfully conducted, shall, on conviction thereof, be fined in any sum less than three hundred dollars, or be imprisoned not exceeding six months, or both, for each offense.

Bribery, etc.

(36.) SEC. 5. If any person shall offer any bribe, threat or intimidation to any elector, for the purpose of influencing his vote, or any elector shall be guilty of accepting a bribe, he shall, on conviction thereof, be fined in any sum not exceeding fifty dollars.

Challenges, and how determined.

(37.) SEC. 6. Challenges shall be allowed at the polls, for cause, by any qualified voter, and the judge of election shall hear and immediately decide upon any challenge that may be made.

CHAPTER II.

OF ELECTORS AND QUALIFICATION OF OFFICERS.

SECTION.
38. Qualification of delegate to Congress.
39. Qualification of members of Assembly.
40. Qualification of Territorial, county and precinct officers, and of electors.

SECTION.
41. Soldiers not to vote or serve on jury unless residence in Territory.
42. Who deemed a resident.
43. Female suffrage.

An Act prescribing certain qualifications necessary to enable a person to be eligible to hold office, vote or serve as a juror.

[*Approved January* 21, 1859.]

Qualification of delegate to Congress.

(38.) SEC. 1. *Be it enacted by the Governor aud Legislative Assembly of the Territory of Utah*:—That no person shall be elected a delegate to the Congress of the United States from this Territory, who has not been a resident therein during one year next preceding the day of election.

Of members of Assembly.

(39.) SEC. 2. No person shall be eligible to a seat in either branch of the Legislative Assembly, unless he has been a resident in the county or district to be represented, during at least one year next preceding the day of election.

Of Territorial, county and precinct officers and electors.

(40.) SEC. 3. No person shall be elected or appointed to any Territorial, district, county or precinct office, unless he shall have been a constant resident in this Territory during at least one year next preceding such election or appointment; neither shall any person be entitled to hold any office of trust or profit in the Territory, or vote at any election unless he is a male citizen of the United States, over twenty-one years of age, and has been a constant resident in the Territory during the six months next preceding said election or appointment. (1)

SEC. 4. (2)

Soldiers not to vote, etc.

(41.) SEC. 5. *And be it further enacted:* That no officer or soldier of the United States army or other person subject to their military authority is eligible to hold any office or serve on any jury or vote at any election in this Territory, unless his home and place of residence was therein at the time of engaging in such service.

Who deemed a resident.

(42.) SEC. 6. No person shall be deemed a resident within the meaning of this act, unless he is a tax payer in this Territory.

An Act conferring upon women the elective franchise.

[*Approved February* 12, 1870.]

Female suffrage.

(43.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That every woman of the age of twenty-one years who has resided in this Territory six months next preceding any general or special election, born or naturalized in the United States, or who is the wife, widow, or the daughter of a native born or naturalized citizen of the United States, shall be entitled to vote at any election in this Territory.

SEC. 2. All laws or parts of laws conflicting with this act are hereby repealed.

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(1) As amended Feb. 5, 1868.

(2) This section refers to qualification of jurors, and is put under that head. See Sec. (1073.)

TITLE IV.

OF TERRITORIAL OFFICERS; OF COUNTIES AND COUNTY OFFICERS; AND OF PRECINCT OFFICERS.

CHAPTER I. Of certain Territorial officers and their duties.
CHAPTER II. Of commissioners of deeds in States and other Territories.
CHAPTER III. Of counties.
CHAPTER IV. Of county officers and their duties.
CHAPTER V. Of precinct officers and their duties.

CHAPTER I.

OF CERTAIN TERRITORIAL OFFICERS AND THEIR DUTIES.

SECTION.
44. Providing for election of treasurer and auditor of public accounts.
45. Treasurer to give bonds and take oath of office.
46. Duty of treasurer.
47. Treasurer to disburse public money and report.
48. Auditor to give bonds and take oath of office.
49. Duties of auditor.
50. Vacancies how filled.
51. Auditor to enforce payment of taxes due the Territory.
52. Certain officers to report to auditor of public accounts.
53. Auditor to report to Legislative Assembly.
54. Auditor to make report to treasurer.
55. Treasurer to report to Assembly.
56. Certain officers to report to county clerks.
57. County clerk to report to county treasurer.
58. Proceedings against delinquent officers.
59. Officers or agents to deliver moneys, books, &c., to successors.
60. Auditor to provide seal for secretary's office.
61. Seal for auditor's office.
62. Treasurer to procure canceling stamp.

SURVEYOR GENERAL.

63. Providing for election of surveyor general.
64. To take oath of office and give bonds.
65. Duties of surveyor general.
66. Same.
67. All surveys made to correspond with original survey.
68. To give certain certificates.
69. Former certificates validated.
70. Books, records, plats and papers in surveyor general's office to be property of Territory.

SEALER OF WEIGHTS AND MEASURES.

71. Providing for election of sealer of weights and measures.
72. Duties of sealer of weights and measures.
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74. Penalty for using weights and measures not sealed and gauged.
75. To procure suitable rooms, &c.
76. To keep accurate account.

SECTION.

77. To take charge of standard weights and measures.
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80. Establishing general office for recording marks and brands.
81. Auxiliary office in every county.
82. Duties of persons wishing to have recorded mark or brand.
83. Duties of general recorder.
84. To publish recorded marks and brands.
85. Duties of clerks of auxiliary offices.
86. Penalty for using or defacing brand of another.

STATE AND COUNTY ROAD COMMISSIONERS.

87. Providing for election of State road commissioner.
88. Duty of State road commissioner.
89. Same.
90. Duty to make contracts.
91. County court to appoint county road commissioners.
92. Duty of county road commissioners.
93. Duty of commissioners provided for by this act.
94. Damages may be appraised.
95. Must advertise for labor and material.
96. Construction of last section.

INSPECTOR OF SPIRITUOUS LIQUORS.

97. Office of inspector of spirituous liquors created.
98. Inspector to be appointed by governor.
99. Liquors to be inspected.
100. Duties of inspector.
101. Hydrometer adopted.
102. What shall be deemed the strength of spirits.
103. Penalty of selling without inspection.

PENITENTIARY AND WARDEN.

104. Inspectors of penitentiary changed to " board of directors."

SECTION.

105. Penitentiary to be under control of directors.
106. Election and qualification of warden.
107. Directors to appoint certain officers.
108. Duty of directors.
109. To have free access for inspection, &c.
110. Directors to report to Assembly during first week of session.
111. Warden to receive prisoners.
112. Duty in case of violence or resistance by prisoners.
113. Warden to furnish clothing in certain cases.
114. No communication with prisoners without consent of warden.
115. Male and female prisoners to be kept separate.
116. By instruction of directors, warden may offer reward for escapes.
117. In case of fire convicts may be removed.
118. Spirituous liquors forbidden.
119. Privileges and duties of warden.
120. Duties of clerk.
121. Posse may be summoned in certain cases.
122. Auditor to issue warrants for relief of warden.
123. Warden may lease penitentiary.
124. Lessee constituted assistant warden.
125. Convicts may be hired out.
126. What convicts may be put to hard labor.

LIBRARIAN AND LIBRARY.

127. Election and duty of librarian.
128. Term of office and qualification.
129. To make catalogue, and preserve from waste.
130. May commence suit to collect fines &c.
131. Location of library.
132. Care of books, &c.
133. To contract for room.
134. Appropriation for library.
135. No farther expense.
136. Construction of law, as to removal.

An Act to provide for the appointment of a Territorial treasurer and auditor of public accounts.

[*Approved January* 20, 1852.]

Providing for election of Treasurer and Auditor.

(44.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That a Treasurer and Auditor of Public Accounts shall be elected, by the joint vote of both houses of the Legislative Assembly, whose term of office shall be four years and until their successors are elected and qualified, unless sooner superseded by legislative election.

Treasurer to give bonds and take oath of office.

(45.) SEC. 2. The treasurer, previous to entering upon the duties of his office, shall give bonds to the people of the Territory of Utah, in the penal sum of twenty thousand dollars; which sum shall be increased at the discretion of the Legislative Assembly, or during its recess, by the governor, with sufficient securities, to the acceptance of the auditor of public accounts, which bond shall be filed in his office; and shall also take an oath or affirmation to support the Constitution of the United States, and faithfully discharge the duties of his office.

Duty of treasurer.

(46.) SEC. 3. The treasurer shall receive all moneys or other property belonging to the Territory that may be raised by taxation or otherwise; and shall procure suitable books in which he shall enter an account of his receipts and disbursements, to whom made, and on what account.

Same.

(47.) SEC. 4. The treasurer shall pay all moneys that may come into his hands, by virtue of his office, upon drafts or orders, countersigned by the auditor of public accounts; and shall annually report to the governor, on or before the first day of December, or oftener, if required by the governor, a true account of his receipts and disbursements, with the necessary vouchers for the same; and shall deliver to his successor in office, all books, moneys, accounts, or other property belonging to the Territory, so soon as his successor shall become qualified.

Auditor to give bonds and take oath of office.

(48.) SEC. 5. The auditor of public accounts, previous to entering upon the duties of his office, shall give bonds to the people of the Territory of Utah, in the penal sum of five thousand dollars, which sum may be increased at the discretion of the Legislature, or during its recess, by the governor, with sufficient securities to the acceptance of the probate judge of Salt Lake county, to be filed in his office; and shall also take an oath or affirmation, to support the Constitution of the United States, and faithfully discharge the duties of his office.

Duty of auditor.

(49.) SEC. 6. The auditor of public accounts shall examine and audit all public accounts connected with the pecuniary affairs of the Territory, and shall report the same to the governor, on or before the first day of November in each year, and oftener if required by the governor, and shall deliver to his successor in office, all books, moneys, accounts, or other property, belonging to the Territory, so soon as his successor shall become qualified.

SEC. 7. (1)

Vacancies, how filled.

(50.) SEC. 8. Vacancies may be filled by executive appointment in the foregoing, or any offices, when the mode of supplying vacancies is not prescribed by law.

An Act authorizing the auditor of public accounts to enforce the collection of delinquent Territorial taxes, and for other purposes.

[*Approved January* 18, 1867.]

Auditor to enforce payment of taxes.

(51.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That the auditor of public accounts is hereby authorized to enforce the collection and payment into the Territorial treasury of all the taxes now due or that may hereafter become due the Territory, by commencing civil suits against delinquent assessors and collectors or ex-assessors and collectors on their bonds.

SECS. 2, 3, 4. (2)

An Act further defining the duties of Territorial and county officers or agents.

[*Approved February* 17, 1870.]

Certain officers to report to auditor.

(52.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That the Territorial treasurer, road commissioner, surveyor general, recorder of marks and brands, warden of the penitentiary and all other Territorial officers or agents having the care, custody, purchase or expenditure of any money or public property shall, on or before the first day of December in each year, report to the auditor of public accounts an accurate invoice of the property on hand, with accompanying vouchers, for the property purchased during the year. They shall also submit an invoice and proper vouchers for money and property paid out during each year ending November thirtieth.

Auditor to report to Legislative Assembly.

(53.) SEC. 2. The auditor shall carefully examine all such reports and vouchers, and see that the property is suitably cared for, and the money judiciously expended, according to law and the design of the appropriation; and for this purpose he is hereby authorized to administer an oath to any person he may wish to have testify in the premises. He shall make a condensed report of the several reports herein contemplated, and submit the same to the Legislative Assembly during the first week of its regular session, with such recommendations or suggestions as he may think proper, for the consideration of the Assembly.

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(1) Superseded by act approved Feb. 17, 1870. See section (58.)

(2) These sections refer exclusively to county court and county clerk, and are placed under those heads. See sections (189), (190) and (191.)

(54.) SEC. 3. The auditor shall make a report to the Territorial treasurer of the property in his care, as is contemplated for other officers to report to him as provided for in section one of this act.

Auditor to report to treasurer.

(55.) SEC. 4. The treasurer shall make a report to the Legislative Assembly and be governed in the discharge of his duties as is contemplated for the auditor in section two of this act.

Treasurer to report to Assembly.

(56.) SEC. 5. All county officers or agents having the care or disposal of county money or other property, shall make a report to the clerk of the county court in like manner as is provided for Territorial officers to report to the auditor in section one of this act.

County officers or agents, to report to the county clerks.

(57.) SEC. 6. The clerk of the county court shall be governed in the discharge of his duties as is provided for the auditor in section two of this act; he shall also make a report of the property in his care to the county treasurer annually, on the first day of December: *Provided,* however, said condensed report, referred to in section two of this act, shall be made to the county court at the regular December term, instead of to the Legislative Assembly.

County clerk to report to the county treasurer.

(58.) SEC. 7. In case any officer or agent, contemplated in this act, shall neglect to make a report or deposit a receipt as herein required, the officer to whom such report or receipt is returnable, shall notify the proper prosecuting attorney of the facts in the case, and it is hereby made the duty of such attorney to proceed against such delinquent officer or agent on his bonds, contract or agreement as soon as practicable. When judgment is rendered and executed, the money received shall be paid by the proper officer into the Territorial treasury, if from a delinquent Territorial officer or agent; if from a delinquent county officer or agent, it shall be paid to the county treasurer. Attested copies of receipts for all money paid into either treasury shall be deposited, if from the Territorial treasury, with the auditor of public accounts by the first day of January annually; if from the county treasury, with the clerk of the county court, annually on the first day of the session of the December term of said court.

Proceedings against delinquent officers or agents.

Where money collected on proceedings, etc., shall be deposited.

Officers or agents to deliver moneys, books, etc., to their successors.

(59.) SEC. 8. Officers or agents, contemplated in this act, shall deliver to their successors in office all moneys, books, papers and other property belonging to the office and take a receipt therefor, and when from the Territorial treasurer deposit an attested copy thereof with the auditor of public accounts; when from the county treasurer deposit said copy with the clerk of the county court, which copies shall be deposited within thirty days from the date of receipt.

An Act authorizing and requiring the auditor of public accounts to procure seals and for other purposes.

[*Approved February* 15, 1872.]

Territorial seal.

(60.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That the auditor of public accounts be, and is hereby authorized and required to procure a new seal for the Territorial secretary's office; the pattern and design of said seal to be the same as the original Territorial seal, excepting the year of date, which shall be represented by figures, and not as in the original by Roman letters; said seal to be two inches in diameter.

Seal for auditor.

(61.) SEC. 2. The auditor of public accounts is authorized and required to procure a suitable seal of office, and to impress said seal on all warrants, and on all other official papers issued by him; and for the amount of costs of said seals, he is herein authorized to draw on the Territorial treasurer.

SEC. 3. (1)

Treasurer to procure canceling stamp.

(62.) SEC. 4. It shall be the duty of the Territorial treasurer to procure a proper canceling stamp, and imprint the same on all auditor's warrants redeemed by him, and deposit said warrants in his office.

An Ordinance creating a surveyor general's office, &c.

[*Approved March* 2, 1850.]

Providing for election of surveyor general.

(63.) SEC. 1. *Be it ordained by the General Assembly of the State of Deseret:* That a Surveyor General for the State shall be elected by the General Assembly, whose term of office shall be four years, and until his successor is elected and qualified, unless sooner superseded by legislative election. (1)

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(1) This section authorized the calling in of certain outstanding warrants.

(64.) SEC. 2. The surveyor general shall take an oath of office and give bond and security to be approved by the auditor of public accounts, and filed in his office. To take oath of office and give bonds.

(65.) SEC. 3. The surveyor general shall keep a record of all surveys made by himself or reported to him by other surveyors, in a book suitable for the purpose. He shall also have a general superintendence and supervision of all surveys of land made within the State. Duties of.

(66.) SEC. 4. It shall be the duty of the surveyor general, and all county surveyors, to supervise all surveys made in their respective jurisdiction, that the same may be accurate, and no report shall be filed for record until the same shall be certified to by the surveyor general or county surveyor, as being correct. Same.

(67.) SEC. 5. All surveys made in this State shall be made to correspond with the original survey of Salt Lake City, and in all new surveys certificates approved by authorized surveyors shall be considered title of possession to the holding [holders] of the same for the amount of land therein described. All surveys made to correspond with original survey.

An Act to more clearly authorize the surveyor general to give certificates of his surveys, and to further legalize the certificates he has given.

[*Approved January* 19, 1866.]

(68.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah*: That the surveyor general is hereby authorized and required to give, to the person for whom he makes a survey, a certificate thereof, describing the tract, block, or lot, and specifying its area; and such certificate shall be title of possession to the person holding it. To give certain certificates.

(69.) SEC. 2. Certificates of surveys, given by the surveyor general, previous to this act taking effect, are hereby made valid. Former certificates validated.

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(1) As provided by an act approved Jan. 19, 1866.

An Act to regulate surveyors and surveying.

[*Approved March* 3, 1852.]

SECS. 1, 2, 3, 4, 5, 6, 7. (1)

Books, etc., to be property of Territory.

(70.) SEC. 8. All books, records, plots and papers of surveys made within the Territory, kept by and in the possession of the surveyor general appertaining to his office, are hereby made the property of the said Territory, and it shall be his duty to transmit the same to his successor in office.

An Act creating the office of sealer of weights and measures for the Territory of Utah.

[*Approved January* 14, 1857.]

Election of sealer of weights and measures.

(71.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That there shall be elected by the joint vote of the Legislative Assembly, a Sealer of Weights and Measures, whose term of office shall be four years, and until his successor is elected and qualified, unless sooner superseded by legislative election, who shall, immediately after receiving official notice of his election, give bonds with approved security, to the acceptance of, and filed with, the auditor of public accounts, and be commissioned by the governor as other Territorial officers. (2)

Duties of.

(72.) SEC. 2. It shall be the duty of the person so elected, to procure, as soon as practicable after his election, a full set of weights and measures, which shall be according to the seal and standard of the United States; who shall appoint a deputy in each organized county, on application of the county court, except the county in which he resides, and shall furnish said deputy with a set of weights and measures at the expense of the county making application.

Weights, etc., gauged and sealed.

(73.) SEC. 3. All weights and measures used by millers, merchants or any other dealers in dry or wine measures or other merchandise, shall be gauged and sealed according to said standard by the Territorial sealer of weights and measures or his deputy, who is hereby authorized to demand and collect from any person obtaining from him his official seal, to any weight or measure, a reasonable compensation for the same.

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(1) Refer to county surveyors, and will be found under that head.
(2) As provided by an act approved Jan. 19, 1866.

(74.) SEC. 4. Any person dealing in any article of produce or merchandise who shall use weights or measures, other than the standard herein specified, shall be liable to pay a fine of not less than one, nor more than five hundred dollars for each offense, and all damages accruing therefrom, to the party injured, by an action before any court having jurisdiction thereof. Penalty, etc.

An Act further defining the duties of the sealer of weights and measures.

[*Approved January* 18, 1867.]

(75.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That it shall be the duty of the sealer of weights and measures to procure a house or suitable room for the use of the standard weights and measures belonging to this Territory, and he shall keep open the house or room one day in each week, or as often as he may find necessary. To procure suitable rooms, etc.

(76.) SEC. 2. The sealer of weights and measures shall keep an accurate account of all official receipts and disbursements, and make a report to the Legislative Assembly during the first week in each annual session. Accounts to be kept.

(77.) SEC. 3. He shall take charge of the standard weights and measures belonging to the Territory, and safely keep and preserve them until his successor is elected and qualified, to whom he shall turn them over. What to have charge of.

(78.) SEC. 4. The fees for sealing weights and measures shall be as follows: For each examination, testing, sealing and certifying, as required from the owner of the same, viz., for any steelyards, beam, ground, floor, platform, counter or other scales by which may be weighed not exceeding one hundred pounds, seventy-five cents. For any such instrument by which may be weighed over one hundred and less than six hundred pounds, one dollar; over six hundred pounds, one dollar and fifty cents. For any nests or set of measures, seventy-five cents. For any yard stick, dry or liquor measure, twenty-five cents; and the weights attached to any scales shall, as to the compensation of the sealer of weights and measures, be considered as part of the scales: *Provided*, that where any such weights, measures or instruments, upon subsequent examination, be found correct and shall not require to be stamped a second time, the aforesaid sealer of weights and measures shall not receive more than one-half the compensation provided for. Fees.

Examine and test weights and measures.

(79.) SEC. 5. The sealer of weights and measures shall examine and test any of the before mentioned instruments for weighing or measuring, on application by any person who shall tender to him the fee which, by the preceding section, he is authorized to receive; and he shall, in every case where he may employ labor or material in making accurate weights or measures, be entitled to extra compensation therefor, and to retain the article upon which such labor or material has been employed until such compensation be paid.

An Act in relation to marks and brands.

[*Approved January* 13, 1866.]

Establishing general office.

(80.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That a general office for recording marks and brands shall be kept at the seat of government, and a recorder for the same shall be elected by the Legislative Assembly, whose term of office shall be four years, and until his successor is elected and qualified, unless sooner superseded by legislative election; he shall give bonds, with approved security, to the acceptance of, and filed with, the auditor of public accounts. (1)

Auxiliary offices.

(81.) SEC. 2. There shall also be an auxiliary office in every county other than that in which the general office is located, and the duties thereof are hereby devolved on the clerks of the county courts respectively.

Duty of persons desiring recorded *mark or* brand.

(82.) SEC. 3. Whenever any person wishes to obtain a recorded mark or band, application therefor may be made to the general recorder direct or through the auxiliary office of the county in which the applicant resides; and it shall be the duty of the general recorder to designate the particular mark or brand to be used by such applicant and define the place and position it shall occupy on the animal, consulting always the choice or convenience of applicants, so far as may be without interfering with previously recorded marks or brands: *Provided*, if a character is wanted for which there is no type, the applicant shall pay the extra expense thereof.

Duties of general recorder.

(83.) SEC. 4. The general recorder shall keep a record of all marks and brands, with the name and residence of the person owning the same, in a book suitable for the purpose, which shall be free to the inspection of all persons interested; and he shall furnish to the owners certified copies of all marks or brands, which certificates shall be deemed evidence in law.

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(1) As provided by an act approved Jan. 19, 1866.

To publish recorded marks and brands. (84.) SEC. 5. The general recorder shall once a year, or as often as he may deem expedient, furnish the public printer a list of all recorded marks or brands which have not been previously published, and cause to be printed, at the public expense, one thousand copies, either in pamphlet or other convenient form, for reference and preservation; and shall, immediately after publication, gratuitously distribute to each auxiliary office a sufficient number of copies to supply the county clerks, sheriffs, probate judges, selectmen, city recorders, justices, constables, and poundkeepers in their respective counties; and one copy each to like officers in his own county, and the residue he may dispose of at not exceeding twenty-five cents a copy. He may also charge and receive, from each person applying for a mark or brand, the fee of one dollar for each mark or brand so recorded.

Duties of clerks of auxiliary offices. (85.) SEC. 6. Clerks of auxiliary office shall receive and forward to the general recorder all applications for recording marks and brands, and shall furnish each applicant the recorder's certificate of the mark or brand designated and recorded for him, for which service they may receive fifty cents each in addition to the recorder's fee: *Provided*, that they shall gratuitously distribute the printed copies in their respective counties, as contemplated in the fifth section. All such printed copies shall be deemed the property of the several officers respectively, and shall be delivered by them to their successors in office.

Penalty. (86.) SEC. 7. Any person, using a like brand in the position and place recorded to another, or who shall brand another person's animal without the owner's permission, or who shall, without such permission, alter, erase, or deface any brand recorded to another, shall be deemed guilty of a misdemeanor, and shall be liable to a fine in any sum not exceeding one hundred dollars for each offense. (1)

SEC. 8. (2)

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(1) See sec. (2022.)

(2) Superseded by act approved Feb. 13, 1872. See sec. (415.)

An Ordinance providing for State and county road commissioners.

[*Approved January* 15, 1850.]

How elected. (87.) Sec. 1. *Be it ordained by the General Assembly of the State of Deseret:* That a State Road Commissioner shall be elected by the General Assembly, whose term of office shall be four years, and until his successor is elected and qualified, unless sooner superseded by legislative election; (1) who shall take an oath and give bond with security for the faithful performance of the duties of his office; which bond shall be approved by the auditor of public accounts, and filed in his office. Term of office. Oath and bond.

Duties of. (88.) Sec. 2. Whenever the General Assembly shall grant a State road, from one given point to another, it shall be the duty of the State road commissioner to institute a speedy survey for said road, on the most feasible and practicable route, having special reference to public convenience, utility and durability; showing distances, altitude of hill, soils, rivers, ravines, and all such like information relating to convenience and expense, and report the same with all reasonable dispatch to the governor, who with the commissioner, shall decide on the location of said road, and all such, and other maps and reports; and maps, and reports of all surveys made by the State road commissioner, shall be filed in the office of the secretary of State, within a reasonable time.

Powers of. (89.) Sec. 3. If it shall appear evident that there is but one feasible route for any road granted by the General Assembly, or if the governor shall instruct the commissioner to locate any given road on any particular route, previous to a survey; then it shall be the duty of the commissioner to locate said road without delay, and file a report of each and every location of a State road, in the secretary's office, as in the second section.

Commissioners to make contracts. (90.) Sec. 4. It shall be the duty of State road commissioners to make all contracts for building bridges, aqueducts, culverts, turnpikes and all other fixtures necessary for the completion of any public road, located by himself or predecessors in office, yet remaining uncompleted, and draw upon the public treasury for such money as shall from time to time be granted by the General Assembly for the payment of said contracts; keep an accurate account of all sums of money by him received, and how expended, and make a true report of the same, on or before the first of December of each year to the auditor of public accounts.

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(1) As amended Jan. 19, 1866.

(91.) SEC. 5. The county court in each county, shall have power to appoint one or more road commissioners whenever they shall deem it necessary, to locate all county roads within the limits of said county, whose term of office shall be two years, and until their successors are appointed and qualified. They shall also give bond and security for the faithful performance of the duties of their office, to be approved by the clerk of said court, and filed in his office.

County road commissioners, how appointed.

(92.) SEC. 6. It shall be the duty of all county road commissioners so appointed to make all contracts for improvements upon all such roads, locating the same upon the most judicious routes, and keep and make a true and full report of all their proceedings, and lay the same before the county court at each regular session of the same; and before they shall cease to officiate in said office file all such reports in the office of the clerk of the county court.

(93.) SEC. 7. The commissioners herein provided for shall locate all roads herein contemplated, upon such ground as shall be most conducive to the public benefit, and have power to open the same through enclosures, farming lands, &c., where necessary.

Powers of.

(94.) SEC. 8. Any person feeling him or herself damaged by the opening of any such road, through or across their premises, may have the same appraised by three judicious men, who shall in calculating such damages, also consider the benefit accruing to said premises in consideration of said road, and if it shall appear that the premises, through which said road shall pass, are damaged more than benefitted by the same, the owners thereof may recover the same by an appeal to the county courts, all such amounts to be paid out of the public treasury.

Damages, how settled.

An Act defining the duties of Territorial and county officers having the management and expenditure of public funds.

[*Approved February* 15, 1869.]

SEC. 1. (1)

(95.) SEC. 2. Said road commissioner, or other officer or agent, is hereby authorized and required to advertise in

Must advertise for labor and material.

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(1) Superseded by sec. 1 of act approved Feb. 17, 1870. See sec. (52.)

some newspaper published in the county where the improvement is to be made, or, in case there is no such paper published, they shall post up a like advertisement in three or more public places in the settlement near where the work is to be done, or the material delivered, at least two weeks before the time specified for opening the sealed proposals, or otherwise letting the job, as hereinafter provided in this act, and shall set forth the place, day and hour that the proposals will be opened. All proposals shall be under seal, and endorsed: proposals for material, labor, etc., as the case may be, shall be addressed to the proper officer or agent, and delivered on or before the time set forth in the advertisement. On such day, and not before, the proper officer or agent shall open and read the same in the presence of all the bidders who may choose to be present; said officer or agent shall award the contract to the lowest responsible bidder, and may require sufficient bonds for the faithful carrying out of the contract: *Provided*, it may be at the discretion of the officer or agent to decline any or all the bids if they are for a greater amount than in his judgment is reasonable to give; in which case he shall be held responsible to procure the material and labor less than the lowest bid: *Provided*, furthermore, said officer or agent, at his discretion may, in like manner, advertise to let the contracts for material and labor at public sale to the lowest responsible bidder: *Provided*, furthermore, that the provisions of this act may not be complied with, in case of emergencies as of high water or other casualties, or where the improvement to be made does not exceed one hundred dollars, or where no bids are received in response to advertisement. In such cases, said officer may proceed at his discretion to expend the public funds for the purpose appropriated in the best manner for the public good.

Construction of last section.

(96.) SEC. 3. Nothing in this act shall be so construed as to interfere with supervisors collecting and working poll taxes, or any labor of convicts being applied upon roads or other public works.

An Act in relation to the inspection of spirituous liquors.

[*Approved February* 5, 1852.]

Inspector.

(97.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That there shall be and hereby is created the office of a Territorial Inspector of Spirituous Liquors.

(98.) SEC. 2. The Territorial inspector of liquors, shall be appointed by the governor, and may be removed at pleasure. Governor appoint.

(99.) SEC. 3. All spirituous liquors manufactured or imported into this Territory, before being offered for sale, shall be inspected by the Territorial inspector of liquors, or his deputy. Liquors inspection.

(100.) SEC. 4. It shall be the duty of the inspector of liquors, or deputy, to inspect and prove all liquors that he may be called to prove or gauge, &c., and attach his mark or seal on the vessels containing the same. Inspect and prove liquors.

(101.) SEC. 5. *Be it further enacted:* That Sykes' Hydrometer and Scale, adopted by the British Board of Excise, July 2nd, 1816, be, and is hereby adopted as the standard for the proving spirits, in the Territory of Utah. Sykes' hydrometer.

(102.) SEC. 6. All spirits shall be deemed of the strength which Sykes' Hydrometer denotes them. Shall denote.

(103.) SEC. 7. Any person selling spirituous liquors, that have not been inspected and approved by the inspector or deputy, according to the provisions of this act, shall forfeit and pay any sum not exceeding five hundred dollars for every such offense, at the discretion of the court having jurisdiction, to be paid into the Territorial treasury. Selling liquors not inspected. Penalty.

An Act in relation to the penitentiary.

[*Approved January* 20, 1860.]

(104.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah :* That the office termed "Inspectors of the Penitentiary," created by "An act in relation to the Penitentiary," approved Jan. 16, 1855, shall hereafter be styled "Board of Directors of the Utah Penitentiary." Change of title.

(105.) SEC. 2. The penitentiary shall be under the control of a board of three directors, who shall be elected by the joint vote of the Legislative Assembly, and whose term of office shall be four years and until their successors are elected and qualified, unless sooner superseded by legislative election. Said directors shall, before entering upon the duties of their office, qualify by giving bonds with security to the people of the Territory of Utah, in the penal sum of Three directors. How elected. Shall qualify.

one thousand dollars each, conditioned for the faithful performance of the duties of their office, to be approved by and filed with the auditor of public accounts; and the same may be increased, when in the auditor's judgment the public good requires it.

Bonds how filed.

Election and qualification of warden.

(106.) SEC. 3. There shall be elected, by the joint vote of the Legislative Assembly, a Warden, whose term of office shall be four years, and until his successor shall be elected and qualified, unless sooner superseded by legislative election; said warden shall qualify by taking and subscribing an oath to faithfully perform the duties of his office according to law, and give bonds in the penal sum of ten thousand dollars, in the same manner as prescribed for the directors in section second of this act.

A president of the board.

Officers, how appointed.

Shall qualify.

(107.) SEC. 4. The directors shall appoint one of their number president of the board, a majority of whom shall form a quorum for business; they shall appoint a clerk, overseers, guards and all other necessary officers for the penitentiary, not otherwise provided for; and all persons so appointed may be required by the directors to give bonds, with security, to the people of the Territory of Utah, which bonds shall be approved by and filed with the auditor of public accounts.

Duties of directors.

(108.) SEC. 5. It shall be the duty of the directors to visit the penitentiary as often as they may deem it necessary, to examine and enquire into all matters connected with the government and discipline thereof; and to give necessary directions to the warden relative to all matters pertaining thereto; and may require the convicts, who may hereafter be convicted, to labor outside the wall on any public or private works; and when thus employed cause that they be well secured and properly guarded.

Directors have free access for inspection, &c.

(109.) SEC. 6. The directors shall at all times have free access to all parts of the penitentiary, and may inspect all books, papers, documents, communications and correspondence pertaining thereto.

Directors to report annually.

(110.) SEC. 7. The directors shall annually report to the Legislative Assembly, during the first week of its session, the condition of the penitentiary, the number of convicts, their condition; also for what and how long they were sentenced, specifying how many are Territorial; the fiscal affairs, and all the avails arising from the labor of convicts, and an approximate estimate of the means necessary to defray expenses for the ensuing year.

(111.) SEC. 8. The warden shall receive and keep all persons duly committed, and not allow them to hold conversation with any person, except in his or the presence of some other officer in charge, and see that the sentence of each prisoner is properly executed, and that they be diligently employed at the labor assigned them.

Duty of warden.

(112.) SEC. 9. In case any convict or convicts shall offer any violence or resistance to any officer in charge, or do violence to any other convict, attempt to do injury to the buildings or the appurtenances thereunto belonging, attempt to escape, resist or disobey any lawful commands, the officers shall defend themselves, enforce the observance of discipline necessary to secure the persons of offenders and prevent any such aggression or escape of any prisoner; and may punish them at discretion for their misconduct in such manner as shall be prescribed by the board of directors.

If convict offer violence.

(113.) SEC. 10. Whenever any convict shall be legally discharged, the warden may, by the consent of the directors, furnish for said convict clothing not exceeding in value fifty dollars, and money not exceeding thirty dollars, as may by the directors be deemed proper and consistent with the emergency of the case.

Warden to furnish clothing in certain cases.

(114.) SEC. 11. No person shall communicate or deliver to any prisoner any writing, message or package without the inspection and approval of the warden; and any person so offending, upon conviction thereof, shall be punished by imprisonment not exceeding six months, or by fine not exceeding one hundred dollars, recoverable before any court having jurisdiction.

No communication with convicts.

(115.) SEC. 12. Male and female prisoners shall not be kept in the same room, and females shall be under the supervision of a suitable matron.

Male and female convicts to be kept separate.

(116.) SEC. 13. Whenever any prisoner escapes from custody, the warden shall use all due diligence for his apprehension, and for this purpose may, under the instruction of the directors, offer a reward for his arrest and delivery to the warden of the penitentiary.

Rewards for escapes.

(117.) SEC. 14. In case any contagious disease break out among the convicts, or in case of fire or other casualty from which danger may be apprehended, the warden may remove the convicts to some safe and convenient place, there to remain in his charge until said danger is past.

In case of casualties.

(118.) SEC. 15. No spirituous or fermented liquors shall be brought into the penitentiary for the use of any prisoner,

Respecting liquors.

unless prescribed for his health by a physician, in which case he shall specify in writing to the warden, the quantity and quality of the liquor to be furnished.

Powers of warden.

(119.) SEC. 16. The warden shall have power to sue and be sued, defend and be defended in his official capacity, in all courts of law and equity; to direct all persons employed as overseers, guards, assistants and all minor officers, and, by the consent of the directors, to appoint a deputy, for whose official acts he is responsible.

Duties of clerk.

(120.) SEC. 17. The clerk shall be clerk for the warden and directors, and shall record all precepts by which persons are committed, and keep a register of each convict, his name, age, place of birth, particularly describing his person and former occupation, and shall record the time for which he was sentenced, and all contracts and business matters deemed essential by the directors.

Attempt to release convict.

Posse may be summoned.

(121.) SEC. 18. Whenever an attempt is made or about to be made to release any convict belonging to the penitentiary, or to commit any unlawful act upon any person or premises thereunto appertaining, any officer thereof is authorized to summons a sufficient *posse* in the most summary manner, to repair forthwith to the place where such danger is apprehended, for the purpose of repelling such contemplated invasion. Any person refusing or neglecting to obey said summons or any lawful commands of the officer in charge shall, on conviction thereof, be imprisoned not exceeding six months, nor fined not exceeding one hundred dollars, by any court having jurisdiction.

(122.) SEC. 19. The auditor of public accounts, is hereby authorized to issue warrants on the Territorial treasury for the relief of the warden, his deputy, or other persons employed in penitentiary service; also for tools, clothing, furniture, and all other necessary supplies to the amount which may be ordered by the directors, payable out of any money in the treasury appropriated for penitentiary purposes: *Provided*, that nothing herein shall be so construed as to justify issuing warrants for official services of the directors.

An Act further defining the duties of the officers of the penitentiary, and for other purposes.

[*Approved January* 18, 1861.]

Warden to advertise for proposals.

(123.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah*: That the warden of the penitentiary is hereby authorized and required to advertise, in the consecutive numbers of some newspaper published in Salt Lake county for sealed proposals for leasing the penitentiary for not less than one nor more than three years.

Nature of advertisement.

The said advertisement shall set forth the place, day and hour that the proposals shall be opened, and that the penitentiary, warden house and other buildings connected therewith or belonging to the penitentiary will be let, in consideration of which the lessor will for a certain sum take the care and custody of all convicts that are now or may be committed to said penitentiary during the term of contract, and that the lessee may appoint the guards, overseers and other officers that may be necessary to keep safely and securely and to carry out the sentence of the convicts, pay the guards, overseers, and other officers and assistants by him employed. He shall direct and control the labor of the convicts, and have the avails thereof in addition to the sum set forth in the proposition or article of agreement.

All proposals shall be made under seal, and endorsed proposals for leasing the penitentiary, addressed to the waden on or before the day set forth in the advertisement, on which day, and not before, they shall be opened by the warden in the presence of the directors and all the bidders who may choose to be present; and the warden, after reading all the proposals in the presence of the directors and the bidders, shall submit the several bids to the directors; the said directors may thereupon determine which is the best responsible bidder, provided the bidder is a resident citizen of the Territory and of a reputed good, moral character, and will file sufficient bonds with them for the faithful performance of the conditions of the contract; then they shall direct the warden to accept such bid and file papers accordingly: *Provided*, it may be at the discretion of the directors to accept or decline any or all of the bids, if in their judgment the bids are for a greater amount than is reasonable to give, in which case they may proceed as though the first section of this act had not been passed, or they may at any other time thereafter let the penitentiary as provided in this act.

Lessee constituted assistant warden.

(124.) SEC. 2. The person whose bid may be accepted and files bonds and takes possession of the premises and tenements, as contemplated in this act, is hereby constituted an assistant warden, and, as such, shall file sufficient bonds with security with the directors, payable to the people of the Territory of Utah, for the faithful performance of his duties as assistant warden; *Provided*, he shall not have any claims for services as such assistant warden.

Warden may hire out convicts.

(125.) SEC. 3. In the event that the penitentiary and convicts are not rented as contemplated in this act, the warden may hire out any or all the convicts under such regulations as may be prescribed by the directors: *Provided*, such regulations do not conflict with the laws of this Territory.

Convicts to be put to hard labor.

(126.) SEC. 4. All convicts hereafter sentenced, excepting such as may be sentenced to solitary confinement, may be put to hard labor not exceeding ten hours each day, Sundays excepted, under the regulations that are or may be hereafter prescribed by the directors.

An Act in relation to Utah library.

[*Approved March* 6, 1852.]

Librarian how elected.

(127.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah*: That a Librarian shall be elected by a joint vote of the Legislative Assembly of the Territory of Utah, whose duty it shall be to take charge of the library (known in law as the Utah library), as hereinafter prescribed.

Term of office.

(128.) SEC. 2. Said librarian shall hold his office during the term of four years, and until his successor is elected and qualified, unless sooner superseded by legislative election; and before entering upon his duties shall give bonds for the faithful discharge of his duties, in the sum of six thousand dollars with approved security, to the acceptance of the auditor of public accounts, which bond shall be filed in his office; (1) who may also appoint a deputy as occasion requires to act in his stead under the same restrictions as the principal librarian.

Qualify and give bonds.

May appoint deputy.

Duty of librarian.

(129.) SEC. 3. It shall be the duty of the librarian to cause to be printed at as early a date as practicable, a full and accurate catalogue of all books, maps, globes, charts, papers, apparatus and valuable specimens in any way belonging to said library; also to use diligent efforts to preserve from waste, loss or damage, any portion of said library.

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(1) As provided by an act approved Jan. 19, 1866.

Same.

(130.) SEC. 4. It shall be the duty of the librarian, for and in behalf of the Territory of Utah, to plant suits, collect fines, prosecute or defend the interests of said library, or otherwise act as a legal plaintiff or defendant in behalf of the Territory, where the interests of the library are concerned.

Library kept at the seat of government.

(131.) SEC. 5. The location of the library shall be at the seat of government of the Territory of Utah; and it shall be the duty of the librarian to have all the books of the library orderly and properly arranged within the library room, for the use of such officers and persons as are named in the fourteenth section of the Organic Act for Utah Territory, during each session of the Legislative Assembly of Utah: *Provided*, however, that nothing herein contained shall debar the librarian, in vacation of the Legislative Assembly, from permitting books, maps and papers being drawn from said library, for professional and scientific purposes by officers of the United States and of Utah Territory, and other citizens of Utah, where the librarian shall judge the public good may justify.

Who shall be permitted to use books, &c., of library.

Care of books, etc.

(132.) SEC. 6. It shall be the duty of the librarian to let out books for a specified time, and call in the same when due, inflict fines for damage or loss of books, and collect the same, and keep an accurate account of all his official doings in a book kept for that purpose, and make an annual report of the same to the Legislative Assembly of Utah: *Provided*, that no fine shall be excessive, or more than four times the purchase price of the book or books, for the loss or damage of which the fine may be inflicted.

Resolution authorizing the removal of the Utah library to the City Hall.

[*Approved February* 21, 1868.]

To contract for room.

(133.) *Be it resolved by the Governor and Legislative Assembly of the Territory of Utah:* That the librarian of the Utah library is hereby authorized and required to contract with the corporate authorities of Salt Lake City for a room in the City Hall, prepare the same for the reception of and remove the Utah library thereto, and put the same in complete order at as early a day as practicable; and the sum of five hundred dollars, or so much thereof as may be necessary, is hereby appropriated out of the Territorial treasury to defray the expenses thereof.

An Act providing for the maintenance and support of the Utah library.

[*Approved February* 18, 1876.]

Appropriation for library.

(134.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That the sum of seven hundred dollars is hereby appropriated annually, for the next two years, out of any money in the Territorial treasury, in support of the Utah library, to be drawn quarterly by the librarian or his deputy.

No further expense.

(135.) SEC. 2. That no expense, for which the Territory shall be responsible, shall attach to the library and the librarian's salary exceeding the amount hereby appropriated.

Construction of law as to removal.

(136.) SEC. 3. That no act of the governor and Legislative Assembly heretofore passed, shall be so construed as to debar, disqualify, or prevent the librarian from changing the location of the library, whenever by such change the library shall better serve those for whose use it is intended: *Provided*, it shall not be removed from the city of Salt Lake.

CHAPTER II.

OF COMMISSIONERS OF DEEDS IN STATES AND OTHER TERRITORIES.

SECTION.
137. Commissioners may be appointed to take acknowledgments, etc., out of Territory.
138. Oaths administered by.
139. To send oath and signature to secretary of Territory.
SECTION.
140. Seal and signature same force as seal and signature of notary public.
141. What fees may demand.
142. Authority of commissioners appointed by States and other Territories.

An Act authorizing the governor to appoint commissioners to take acknowledgments of deeds or other contracts and affidavits, and depositions in the States and other Territories of the United States.

[*Approved February* 18, 1868.]

Commissioners may be appointed to take acknowledgments, etc.

(137.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That the governor may appoint in each of the States and other Territories of the United States one or more Commissioners, to continue in office during the pleasure of the governor; and such commissioners are empowered to administer oaths and to take depositions and affidavits to be used in this Territory, and also to take acknowledgment or proof of deeds or other instruments to be recorded in this Territory.

Oaths administered by.

(138.) SEC. 2. Oaths administered by any such commissioner, affidavits and depositions taken by him, and acknowledgments as aforesaid, certified by him under his hand and appropriate seal, are made as effectual in law, for all intents and purposes, as if done and certified by a justice of the peace in this Territory.

To send oath and signature to secretary.

(139.) SEC. 3. Before such commissioner can perform any of the duties of his office, he is required to take and subscribe an oath that he will faithfully perform said duties, which oath shall be taken and subscribed before some judge or clerk of a court of record in the State or Territory in which the commissioner is to exercise his appointment, and be certified under the hand of the person taking it and the seal of his court; he is also required to file the oath and certificate together with his signature on paper and a clear impression of his seal on wax or wafer in the office of the secretary of this Territory.

Seal and signature, etc.

(140.) SEC. 4. A signature and seal purporting to be his, will be entitled to the same force, as evidence, with the signature and seal of a notary public.

What fees may demand.

(141.) SEC. 5. Such commissioner is authorized to demand for his services the same fees as may be allowed for similar services by the laws of the State or Territory in which he exercises his office.

Authority of commissioners appointed by States and other Territories.

(142.) SEC. 6. Commissioners of a like nature appointed in this Territory under the authority of any State or other Territory of the United States, are hereby invested with all the authority of a justice of the peace; to issue *subpœnas* requiring the attendance of witnesses before them to give their testimony by deposition or affidavit in any matter in which their deposition or affidavit may be taken by the laws of such other State or Territory; and they are also authorized to administer in any matter in relation to which they are required or permitted by the laws of the other State or Territory; and false swearing in such cases is hereby made subject to the penal laws of this Territory relating to perjury.

CHAPTER III.

OF COUNTIES.

SECTION.
143. Kane county.
144. Washington county.
145. Iron county.
146. Beaver county.
147. Piute county.
148. Millard county.
149. Sevier county.
150. Juab county.
151. Sanpete county.
152. Utah county.
153. Wasatch county.
154. Salt Lake county.
155. Islands in Great Salt Lake attached to Salt Lake county.

SECTION.
156. Davis county.
157. Weber county.
158. Box Elder county.
159. Tooele county.
160. Summit county.
161. Morgan county.
162. Cache county.
163. Rich county.
164. Jurisdiction of counties in case of dispute.
165. Organization of new counties.

An Act defining the boundaries of counties and locating county seats.

[*Approved January* 10, 1866.]

Kane county, Tokerville co. seat.

(143.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That all that portion of Utah Territory bounded north by a line running due east from a point four miles north of the northeast corner of Fort Harmony, east by Colorado Territory, south by Arizona and west by a line running due north from the southern boundary of Utah Territory, passing through Grape Vine Spring, thence running north to the summit of the mountain between Ash Creek and Pine Valley, and along said summit to the line of Iron County, is hereby made and named Kane County, with County Seat at Tokerville. (1)

Washington, St. George co. seat.

(144.) SEC. 2. All that portion of the Territory bounded north by a line running due west from the northern boundary of Kane County, east by Kane County, south by Arizona and west by Nevada is hereby made and named Washington County, with County Seat at St. George.

Iron, Parowan co. seat.

(145.) SEC. 3. All that portion of the Territory bounded south by Washington and Kane Counties, west by Nevada, north by a due east and west line crossing the military road on the summit of the ridge dividing Little Salt Lake and upper Beaver Valleys, and east by Colorado Territory is hereby made and named Iron County, with County Seat at Parowan.

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(1) As amended Feb. 19, 1869.

Beaver, Beaver co. seat.

(146.) SEC. 4. All that portion of the Territory bounded south by Iron County, west by Nevada, north by a line running due east and west through a point two miles due south from the south side of Fort Wilden on Cove Creek and east by the range of mountains dividing Beaver and Pauvan Valleys from the Valley of the Sevier is hereby made and named Beaver County, with County Seat at Beaver.

Piute, Mary's Vale co. seat.

(147.) SEC. 5. All that portion of the Territory bounded south by Iron County, west by Beaver County, north by an east and west line crossing the road on the summit of the dividing ridge between Mary's Vale and Alma, and east by Colorado Territory is hereby made and named Piute County, with County Seat at Mary's Vale. (1)

Millard, Fillmore co. seat.

(148.) SEC. 6. All that portion of the Territory bounded south by Beaver County, west by Nevada, east by the summit of the mountains separating the Sevier from Pauvan and Round Valleys, following said summit east of the lake in Round Valley and north of Round Valley to its intersection with the Sevier river, thence down the channel of said river to the mouth of its lower cañon, thence due west to Nevada is hereby made and named Millard County, with County Seat at Fillmore.

Sevier, Richfield co. seat.

(149.) SEC. 7. All that portion of the Territory bounded south by Piute County, west by Millard County, north by an east and west line crossing the road at the fork of Willow Creek between Gunnison and Salina, and east by Colorado is hereby made and named Sevier County, with County Seat at Richfield.

Juab, Nephi co. seat.

(150.) SEC. 8. All that portion of the Territory bounded south by Millard County, west by the State of Nevada, north by an east and west line to the divide between Cherry and Faust Creeks, thence along the summit of the range between Tintic and Rush Valleys, and the summit of the range between Tintic Valley and Cedar and Goshen Valleys and the summit of the range between Goshen and Juab valleys and the summit of the high ground and range between

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(1) As amended Feb. 18, 1876.

Utah and Juab valleys, and east by the summit of the Nebo range of mountains, passing around the head of Salt Creek Canon, and crossing the Sanpete road where it first rises upon the divide, at the head of the canon from the west, thence following the summit of the range of mountains between Juab, Chicken Creek and Sanpete Valleys, to a point due east from where the Gunnison road crosses the divide between Chicken Creek and Sevier Valley, thence on a straight line southwesterly to the north boundary of Millard County, crossing the Sevier River at the upper Bluff Rocks at the south end of Cedar Ridge, is hereby made and named Juab County, with a County Seat at Nephi. (1)

Sanpete, Manti co. seat.

(151.) SEC. 9. All that portion of the Territory bounded south by Sevier County, west by Juab County, north by the summit of the range of mountains between Sanpete Valley and Spanish Fork River and along the summit of said range until it intersects Green River, thence by a line drawn due east from said intersection to the thirty-second meridian west from Washington City, and east by said meridian is hereby made and named Sanpete County, with County Seat at Manti: *Provided*, that the hay ground of Thistle Valley shall be included in Sanpete County.

Utah, Provo co. seat.

(152.) SEC. 10. All that portion of the Territory bounded south by Juab and Sanpete Counties, west by the summit of the range between Cedar and Rush Valleys, north by the summit of the cross range between the Oquirrh and Wasatch Mountains, east by the summit of the range passing around the head of Dry, American Fork, Battle, Hobble, and Spanish Fork Creeks and a line drawn due north and south across Provo River, at a point one-fourth of a mile above the north fork of said river, to intersect of each extremity of said line the summit of the last named range, is hereby made and named Utah County, with County Seat at Provo. (2)

Wasatch, Heber City co seat.

(153.) SEC. 11. All that portion of the Territory bounded south by Utah and Sanpete Counties, west by Utah and Salt Lake Counties, north by the summit of the range of mountains south of the head waters of East Cañon and Silver Creeks, following said summit to the points where the road leading to Salt Lake City and Rhode's Valley crosses, thence south to Provo River at the high bluff below Goddard's

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(1) As amended Feb. 21, 1868, and Feb. 18, 1870.

(2) As amended Jan. 28, 1869.

Ranch, thence along the channel of said river to its head waters, thence easterly to the summit of the range of mountains north of Uinta Valley, thence along the last named summit and south of Brown's Hole to the thirty-second meridian west from Washington City and east by said meridian is hereby made and named Wasatch County, with County Seat at Heber City.

Salt Lake, Salt Lake city co. seat.

(154.) SEC. 12. All that portion of the Territory bounded south by Utah County, west by the summit of the range of mountains between Great Salt Lake and Tooele Valleys and a line running from the northern termination of said summit through Black Rock on the south shore of Great Salt Lake, north by the shore of said lake easterly to the mouth of Jordan River, thence by the centre of the channel of said river to a point due west from the Hot Springs north of Salt Lake City, thence by a line running due east to said Hot Springs, thence by the summit of the spur range terminating at such Hot Springs to its intersection with the summit of the Wasatch Mountains, and east by the summit of said mountains is hereby made and named Salt Lake County, with County Seat at Salt Lake City.

Islands attached to Salt Lake co.

(155.) SEC. 13. All the Islands in Great Salt Lake are hereby attached to Salt Lake County for election, revenue, and judicial purposes; and judicial jurisdiction of all acts and transactions done or entered into on the waters of Great Salt Lake and on so much of its beach as is not included in any county is hereby given to Salt Lake County and the judicial district to which said county at the time belongs.

Davis, Farmington co. seat.

(156.) SEC. 14. All that portion of the Territory bounded south by Salt Lake County, west by the eastern shore of Great Salt Lake, north by a line running due east from a point on said shore to a point in the centre of the channel of Weber River due north from the northwest corner of Kingston's Fort, thence up the centre of said channel to a point opposite the summit of the Wasatch mountains, and east by the summit of said mountains is hereby made and named Davis County, with County Seat at Farmington.

Weber, Ogden city co. seat.

(157.) SEC. 15. All that portion of the Territory bounded south by Davis County and the dividing ridge between Ogden Hole and Weber Valley, west by the eastern shore of Great Salt Lake, north by a line drawn due east from a point in said shore to the Hot Springs by the Territorial road north of Ogden City, thence by the summit of the spur range terminating at said Hot Springs to its intersection with the summit of the Wasatch Mountains, east by the summit of said mountains, passing around the head waters of Ogden River, is hereby made and named Weber County, with County Seat at Ogden City.

Box Elder, Brigham city co. seat.

(158.) Sec. 16. All that portion of the Territory bounded south by Weber County, thence by the shore of Great Salt Lake, following said shore around the head of Bear River Bay, Promontory Point and the north end of said lake, and thence southeasterly to a point where it is intersected by latitude forty-one degrees north, thence by said latitude to the summit of Pilot Peak, thence due south thirty minutes of latitude, thence by latitude forty degrees and thirty minutes north, west by Nevada, north by latitude forty-two degrees and east by the summit of the range of mountains east of Malad Valley, crossing Bear River at the centre of its lower cañon, and thence southerly along the summit of the Wasatch Mountains and passing around the head waters of Box Elder and Willow Creeks, is hereby made and named Box Elder County, with County Seat at Brigham City.

Tooele, Tooele city co. seat.

(159.) Sec. 17. All that portion of the Territory bounded south by Juab County, west by Nevada, north by Box Elder County, and east by the west and south shores of Great Salt Lake and Salt Lake and Utah Counties is hereby made and named Tooele County, with County Seat at Tooele City.

Summit, Coalville co. seat.

(160.) Sec. 18. All that portion of the Territory bounded south by Wasatch County, west by Salt Lake County, north by the summit of the range of mountains forming the upper cañon of East Cañon Creek, thence northerly along the summit of the range of mountains between said creek and Weber River; thence across said river to, and along the summit of the high land between Plumbar or Lost and Echo Cañon Creeks, thence to, and along the summit next north of Yellow Creek to Bear River, thence easterly across said river to the Territorial line, including all that portion of Green River County, now remaining in Utah Territory, is hereby made and named Summit County, with County Seat at Coalville. (1)

Morgan, Morgan city co. seat.

(161.) Sec. 19. All that portion of the Territory bounded south and east by Summit County, west by Salt Lake, Davis and Weber Counties, and north by Weber County and a line running from a point in the eastern boundary of Weber County nearest the most eastern head waters of

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(1) As amended Feb. 16, 1872.

Ogden River along the summit of the high lands or ranges passing around the head waters of Plumbar or Lost Creek, easterly to the point where the north boundary of Summit County crosses Bear River is hereby made and named Morgan County, with County Seat at Morgan City. (1)

Cache, Logan city co. seat.

(162.) SEC. 20. All that portion of the Territory bounded south by Morgan, Weber and Box Elder Counties, west by Box Elder County, north by latitude forty-two degrees north, and east by the summit of the ridge mountains between Cache and Bear Lake Valleys is hereby made and named Cache County, with the County Seat at Logan City.

Rich, Randolph co.seat.

(163.) SEC. 21. That all of that district of country embraced within the following boundaries, to wit: Commencing on the ridge west of Swan Creek on the Utah and Idaho Territorial line, at the point dividing Cache and Rich Counties, thence southward on said ridge to a point near Wasatch and strike the railroad one mile east of Wasatch Station, thence along the north side of the railroad to where it enters Bear River Valley, thence directly east to the Wyoming line, thence north along said line to where it strikes Idaho, thence west to the place of beginning, shall be known and designated under the name of Rich County and the town of Randolph is hereby constituted the County Seat. (2)

Jurisdiction of counties in case of dispute.

(164.) SEC. 22. When any uncertainty or dispute arises as to what county an act or transaction has transpired in, either of the counties in which it is fairly presumable such act or transaction has occurred is hereby authorized to have jurisdiction in the case.

An Act to provide for the organization of new counties.

[*Approved January* 16, 1865.]

Organization of new counties.

(165.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That the probate judge of any new or unorganized county, after he shall have been elected and qualified, shall proceed to organize said county by appointing three selectmen, citizens of the said county, who shall be qualified by the judge administering to them an oath of office; when they and the probate judge shall appoint all other county officers required by law, who are hereby authorized and empowered to act until the next general election, and until their successors are elected and qualified.

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(1) As amended Feb. 19, 1868.
(2) As amended Feb. 16, 1872.

CHAPTER IV.

OF COUNTY OFFICERS AND THEIR DUTIES.

PROBATE JUDGE.

SECTION.
166. Provides for probate judge in each county.
167. Vacancy how filled.
168. Probate court always open.
169. When district court held in same county, probate court held on Monday preceding.
170. Jurisdiction of probate court.
171. Where records kept.
172. Probate judge to appoint clerks.
173. Election of probate judges.
174. When to qualify.
175. What bonds required.

SELECTMEN AND COUNTY COURTS.

176. Provides for election of selectmen.
177. When and where to qualify.
178. Organization of county court.
179. Duties of county court.
180. Same.
181. Same.
182. Shall district county in road, precinct and school districts.
183. Shall have care and custody of certain persons.
184. May transact certain business separately.
185. Must report their action to county court.
186. Sessions of county court, when held.
187. County officers to deliver books, &c., to their successors.
188. Authorized to appoint certain officers and fill vacancies.
189. To establish rate per cent. for certain taxes.
190. County court to hear and adjust claims for remittance of taxes.
191. Clerk to keep accurate accounts.
192. County court to locate quarantine grounds.
193. Penalty for refusing to comply with quarantine regulations.
194. May enter land for seats of justice.

SHERIFFS.

SECTION.
195. Election and term of office.
196. Oath and bonds of.
197. May appoint deputies.
198. Must serve process on tender of fees.

JAILS.

199. Each county may erect jail.
200. Sheriff shall be jailor.
201. Duties of jailor.
202. Male and female psisoners to be kept separate.
203. Duties of selectmen in reference to jails.

PROSECUTING ATTORNEY.

204. Election and term of office.
205. Qualification and bonds.
206. Duties of prosecuting attorney.
207. Same.
208. Compensation and how paid.
209. May appoint deputy.
210. Temporary appointment provided for.

COUNTY TREASURER.

211. Office of county treasurer created.
212. Election and qualification.
213. Duties.

COUNTY RECORDER.

214. Election and term of office.
215. Bond and oath of office.
216. Duties.
217. Same.
218. Books of record to be indexed.
219. Books in which to record deeds, instruments and plots to be kept.
220. Who authorized to take acknowledgments.
221. Official signature to be affixed thereto.
222. Not to record transfers without certificate of survey.

SECTION.
223. Time allowed to enclose land after survey.
224. Certain officers may appoint deputies.
225. Power of deputies and their fees.

SURVEYORS AND SURVEYING.

226. Election of county surveyors.
227. Bond and oath of office.
228. After survey to make copies and transmit one to surveyor general and one to county recorder.
229. When a re-survey may be had.
230. Duty of persons transferring surveyed lands.
231. Survey void in certain contingencies.
232. Duty in case of joint enclosure.
233. What records and books county surveyor to keep.
234. What and where corners to be made.
235. May appoint deputies.

CORONERS.

236. When elected.
237. Bond and oath of office.
238. When to perform duties of sheriff.
239. Shall not appear as attorney or counsel.
240. Coroner or justice to hold inquest.
241. Form of warrant.
242. Duty of officers executing the warrant.
SECTION.
243. Duty of coroner or justice if juror fails to appear.
244. May issue subpœnas.
245. Oath to be admininistered to witnesses.
246. May require testimony to be written and subscribed.
247. Duty of jurors.
248. When finding not to be made public.
249. If person charged present, coroner or justice shall make warrant for arrest.
250. When warrant to issue, if person charged not present.
251. What warrant to contain.
252. Where the inquisition and evidence to be returned.
253. Disposition of body of deceased.
254. Fees.

NOTARIES PUBLIC.

255. Bond and oath of office.
256. Where commission and oath to be recorded.
257. Authorized to administer oaths and take acknowledgments.
258. Duty in relation to protests.
259. To keep a record of official acts.
260. Where records to be deposited in case of vacancy.
261. What official seal to contain.

An Act in relation to the judiciary.

[*Approved January* 19, 1855.]

SECS. 1 to 22 inclusive. (1)

Provides for probate judge in each county.

(166.) SEC. 23. There shall be a Judge of Probate in each county within the Territory, whose jurisdiction within his court, in all cases, arises within their respective counties under the laws of the Territory: said judge shall be elected by the joint vote of the Legislative Assembly, and commissioned by the governor, they shall hold their offices for the term of one year, and until their successors are elected and qualified. They shall be qualified and sworn by any person authorized to administer oaths, and give bonds and security in the sum of not less than ten thousand dollars, to be approved by the auditor of public accounts; and the auditor shall give the person filing bonds a certificate that such bond has been approved by him and filed in his office. (1)

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(1) These sections referred exclusively to the district courts, and those sections which have not been repealed by subsequent legislation, are placed under their appropriate heads.

(167.) SEC. 24. In case of a vacancy occurring in the office of the judge of probate, the governor may appoint and fill such vacancy until the next succeeding Legislative Assembly, or some subsequent one, shall elect one; said judge of probate so appointed shall qualify and give bonds as above provided. (2)

Vacancy how filled.

(168.) SEC. 25. The probate court shall be considered in law as always open; but the judge shall hold regular sessions on the second Mondays of March, June, September and December of each year, and shall continue at each session one week, or until the business ready for trial shall be disposed of.

Probate court always open.

(169.) SEC. 26. When the district court is to sit in a county on any of the days appointed in the preceding section for the sessions of the probate court, the latter shall be held on the Monday preceding, and when the judge is required by law to perform any duty which takes him from the county, on one of the appointed days, the session of the court shall be holden on the following Monday, or such day as the judge may appoint.

When district held in same county, probate court held on Monday preceding.

(170.) SEC. 27. The judge of probate has jurisdiction of the probate of wills, the administration of the estates of deceased persons, and of the guardianship of minors, idiots and insane persons. (3)

Jurisdiction.

(171.) SEC. 28. The probate records shall be kept in books separate from those of the other business of the court.

Where records kept.

SEC. 29. 30. 31. (4)

(172.) SEC. 32. The probate judges in their respective counties shall appoint a clerk, who shall keep his office at the county seat, and who shall attend all sessions of the probate court, as also sessions of the county court for the transaction of county business. It shall be the duty of the clerk of the probate court to keep a true and faithful record of all the proceedings in the probate court in session, enter-

Probate judges to appoint clerks.

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(1) The jurisdiction of the probate courts is now fixed by act of Congress. See p. 54. By act of the Territorial Legislative Assembly the probate judge is made an elective office, and so much of this section as is in conflict therewith is repealed. See sec. (173.)

(2) See sec. (188.)

(3) And in divorce cases, see sec. 3 of an act of Congress entitled "An Act in relation to courts and judicial officers in the Territory of Utah," p. 53.

(4) Repealed, as they are inconsistent with an act of Congress. See p. 53.

ing distinctly each step in the progress of any proceedings; but such record shall be equally valid if made by the judge.

SEC. 33. (1)

SEC. 34, 35. (2)

An Act providing for the election of probate judges.

[*Approved February* 20, 1874.]

Probate judges elected for two years.

(173.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That on the first Monday in August, A. D. 1874, and every two years thereafter, there shall be elected by the qualified voters of the several counties of Utah Territory, one Probate Judge for each county, whose term of office shall be for two years and until his successor in office is duly elected and qualified.

To qualify within twenty days.

(174.) SEC. 2. The probate judges before entering upon the duties of their offices, and within twenty days from the date of their election, shall qualify as provided for in the two [next] succeeding sections [section].

To give bond in the sum of $5,000.

Sum may be increased.

Bond to be filed with county treasurer.

(175.) SEC. 3. The probate judge shall give a bond for the faithful performance of his official duties in the penal sum of five thousand dollars, which amount may be increased by the selectmen of the county to any sum not exceeding twenty thousand dollars, with at least two sufficient sureties, who are residents of the county, and worth the sum for which they become liable, over and above all their debts and liabilities in property not exempt from execution, which said bond shall be approved by, and filed with the county treasurer; and shall take and subscribe an oath to the effect that he will honestly and faithfully perform the duties of the office on which he is about to enter, which oath shall be attached to, and filed with said bond: *Provided*, that so much of section twenty-three of an act in relation to the judiciary, approved January 19th, 1855, as conflicts with this act, is hereby repealed.

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(1) Repealed, as it is inconsistent with an act of Congress. See p. 53.

(2) Repealed by an act of the Legislative Assembly approved Jan. 8, 1866.

An Act creating the office of selectmen and prescribing their duties, also the duties of the county courts.

[*Approved January* 8, 1866.]

Election of selectmen.

(176.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That there shall be three Selectmen in each organized county within the Territory, whose term of office shall be three years. And at the organization of new counties there shall be elected, at the first general election, three selectmen, as follows, to wit: The senior shall hold his office for three years, the second for two years and the junior for one year; and thereafter one shall be elected each year, who shall hold his office for the term of three years and until his successor is elected and qualified: *Provided*, that in each county now organized the selectmen shall be elected in the same manner as provided for the continuation of the election of selectmen in new counties.

When and where to qualify.

(177.) SEC. 2. Said selectmen shall be sworn before the clerk of the probate court and give such bonds as the clerk shall approve, and the same shall be filed in the clerk's office, who shall give them a certificate of office under the seal of the probate court. (1)

Organization of county court.

(178.) SEC. 3. The probate judge, in connection with the selectmen shall be known as the County Court, any three of whom shall form a quorum to do business; and they are invested with such powers and jurisdiction as are or may be conferred by law. The clerk of the probate court shall be the clerk of this court, shall keep his office at the county seat and shall attend himself or by deputy all sessions of the court, and keep the records, papers and seal of the court. The office of the county clerk is to be kept open during usual business hours.

Duties of county court.

(179.) SEC. 4. This court is authorized and required to take the management of all county business and the care and custody of all the county property, except such as is by it placed in the custody of another; and shall have the control of all books, papers and instruments pertaining to their office. Said court shall audit all claims against the county, and cause the county seal to be affixed to all warrants or orders on the treasury for money to be paid out of the county treasury: shall audit and settle the accounts of the treasurer and those of any other officer or receiver of county revenue, taxes, or other dues payable into the county treasury, and those of any person entrusted to expend any money of the county, and to require them to render their accounts as directed by law.

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(1) See sec. (266) amending this section in relation to giving and filing bonds.

Same.

(180.) SEC. 5. Said court shall keep a book to be known as the county book, in which shall be recorded all orders and decisions made by them, except those relating to roads and probate affairs. Orders for the allowance of money from the county treasury shall state on what account and to whom the allowance is made, dating and numbering the drawing on the treasury each order; and said court are to superintend the fiscal affairs of the county and secure their management in the best possible manner.

Same.

(181.) SEC. 6. The county court shall also keep a separate book for the entries of all proceedings and adjudications relating to the establishment, change or discontinuance of roads; and also separate books for probate business. They shall keep an account of the receipts and expenditures of the county and annually on the first Monday of June, cause a minute statement of them for the preceding year to be made, with an account of all debts payable to and by the county and the assets of the county; have a copy of the same posted up, one at the county seat, at the usual place of holding courts, and at each of two other public places in the county, or published in some newspaper having general circulation in the county, and shall cause the original to be filed in their office, and shall also cause a copy thereof to be annually furnished to the Legislative Assembly of this Territory during the first two weeks of its session.(1)

Shall district county into road, precinct and school districts.

(182.) SEC. 7. The county courts shall district their respective counties into road districts, precincts, school districts, or such other subdivisions as may become necessary or proper; locate sites for public buildings and erect the same; have the control of all timber, water privileges or any watercourse or creek; to grant mill sites and exercise such powers as in their judgment shall best preserve the timber and subserve the interests of the settlements in the distribution of water for irrigation or other purposes. Grants or rights held under legislative authority shall not be interfered with.

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(1) As provided by amendment of Feb. 21, 1868.

(183.) SEC. 8. It shall further be the duty of said courts to oversee the poor and provide for their maintenance; to take care, custody and management of insane persons, who are incapable of conducting their own affairs, and of their estate both real and personal, and to provide for the safe keeping of such insane persons, their maintenance and the maintenance of their families and the education of their children.

Shall have care and custody of certain persons.

(184.) SEC. 9. The selectmen may transact business separately, subject to the approval of the county courts, relating to the poor, insane persons, orphans and minors, and may have authority to bind out vicious, idle or vagrant children or orphans and minors, until they shall attain the age of legal majority. They shall also have power to appoint guardians for minors who are orphans, for the persons and property of the insane, where they shall be found incapable of managing their own affairs, and generally to do and perform such other duties pertaining to their office, as shall be required by law or by the probate court in their respective counties.

May transact certain business separate.

(185.) SEC. 10. Said selectmen shall make a report of all their proceedings to the county court at their next regular session, as also a true report of all the affairs and situation of the poor or destitute and insane within their respective counties, and make such suggestions and recommendations as to them shall appear necessary for the action of the court.

Report to county court

(186.) SEC. 11. The sessions of the county courts shall be held quarterly on the first Monday in March, June, September and December in each year, and oftener if they deem it necessary.

County court, when held.

(187.) SEC. 12. It is hereby made the duty of all county officers to deliver to their sucessors in office all books, papers, seals, or other public property in their possession.

Books, &c., to be delivered to successors.

(188.) SEC. 13. The County Courts are hereby authorized and required to appoint all county and precinct officers not made elective by law, and to fill all vacancies of county and precinct officers, not otherwise provided for, that may occur between elections in their respective counties; and any person, so elected or appointed, failing to qualify within ten days after receiving notice of his election, unless he shall previously notify the county clerk that he does not accept the office, or, after qualifying, shall fail or neglect to fulfill the duties thereof, may be fined in any sum not less than five

Authorized to appoint certain officers and fill vacancies.

dollars nor more than one hundred dollars before any court having jurisdiction.

An Act authorizing the auditor of public accounts to enforce the collection of delinquent Territorial taxes, and for other purposes.

[*Approved January* 18, 1867.]

SEC. 1. (1)

To establish rate per cent. for taxes.

(189.) SEC. 2. The county court shall prescribe the rate per cent. for assessing and collecting Territorial and county taxes: *Provided*, that in no case shall more than fifteen per cent. on the amount collected be allowed for assessing and collecting.

To adjust claims for remittance of taxes.

(190.) SEC. 3. The county court shall, at any regular session, including the December term of the current year, hear and adjust all claims made for remittances, extenuation, abatement or commutation; *Provided*, that after the December term of said courts no remittance, extenuation, commutation or abatement shall be allowed by the county courts; and the clerks of the county courts shall, within three months after making any alterations as aforesaid, forward a transcript thereof to the auditor of public accounts, who shall file the same in his office.

Clerk to keep accurate accounts.

(191.) SEC. 4. The clerks of the county courts are hereby required to keep an accurate account of all receipts and expenditures of their respective counties, also of all debts payable to or by said counties, and annually, in the month of May, cause a true statement of the same in detail to be posted up in their offices, and keep said notices posted up during the year. A neglect of this duty by any clerk of the county courts shall render him liable to a fine in any sum not exceeding five hundred dollars.

An Act in relation to quarantine.

[*Approved January* 14, 1857.]

To locate quarantine grounds.

(192.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That the county courts of the several counties be, and are hereby authorized to locate quarantine grounds, and to make such quarantine regulations as they may deem proper, to prevent the introduction of contagious diseases and the spread of the same within their jurisdiction.

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(1) Refers to the duties of the auditor of public accounts. See sec. (51.)

Penalty for non-compliance.

(193.) SEC. 2. Any person refusing to comply with the requirements of the county courts, or who shall wilfully or knowingly introduce any contagious disease into any settlement, shall be liable to pay a fine of not less than fifty, nor more than one thousand dollars, before any court having jurisdiction.

An Act in relation to the entering of public lands.

[*Approved January* 21, 1859.]

May enter land for seats of justice.

(194.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That, so soon as a land office shall be established in this Territory, it shall be the duty of the county courts, respectively, to select and enter a quarter section of land for county purposes, as contemplated in an act of Congress entitled an "Act granting to the counties or parishes of each State and Territory of the United States, in which the public lands are situated, the right of pre-emption to quarter sections of land for seats of justice within the same." Approved May 26, 1824. (1)

SECS. 2, 3. (2)

An Act relating to sheriffs and constables.

[*Approved January* 17, 1854.]

Election and term of office.

(195.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That at the next general election, and every two years thereafter, a Sheriff shall be elected in each county, whose term of office shall be two years, and until his successor is qualified.

Oath and bonds of.

(196.) SEC. 2. Before entering upon the duties of his office, the sheriff shall give bonds in at least five thousand dollars, with approved security, and take and subscribe an oath for the faithful performance of his duties; said bonds and oath to be approved by the probate judge, and filed in the office of the county clerk. (3)

May appoint deputy.

(197.) SEC. 3. The sheriff may appoint a deputy or deputies, for whose acts he shall be responsible; and who shall qualify in the same manner as the sheriff, except that the bonds may be in the sum of two thousand dollars each.

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(1) See sec. 2286, p. 421, Revised Statutes of the United States.

(2) Superseded by townsite act. See sec. (1166.)

(3) Bond to be filed with probate judge. See sec. (266.)

Must serve process on tender of fees. (198.) SEC. 4. When a reasonable compensation is tendered or satisfaction given that the costs of service will be seasonably paid, it is the duty of sheriffs and constables to faithfully and diligently execute all orders, processes, and requirements of a court, under penalty of whatsoever costs, damages and fine may be adjudged.

An Act authorizing the erection of county jails and defining the duties of the officers thereof.

[*Approved February* 13, 1872.]

Each county may erect a jail. (199.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That each county in this Territory is hereby authorized to erect a county jail for the safe keeping of prisoners.

Jailor. (200.) SEC. 2. The sheriff of the county wherein a jail is, or may hereafter be erected, shall, by virtue of his office, become the jailor, and shall furnish all necessary supplies for persons therein kept.

Jailor's duties (201.) SEC. 3. The said jailor shall receive and safely keep all persons duly committed to his custody, and shall record all precepts, by which persons are committed, and keep a register of each—the name, age, place of birth, particularly describing the person, in a book kept for that purpose.

Males and females kept apart. (202.) SEC. 4. Male and female prisoners shall not be kept in the same room, and females shall be under the supervision of a suitable matron, who shall be appointed by the sheriff.

Directors. Duties of. (203.) SEC. 5. The selectmen of the county wherein a jail is, or may hereafter be erected, shall be ex-officio directors, and shall visit the said jail at least once every three months, to examine and enquire into all matters connected with the government and discipline thereof, and give the necessary instructions to the jailor relative to all matters pertaining thereto, and have free access to all parts of the jail, and may inspect all books and documents connected therewith.

An Act to provide for the election of county prosecuting attorneys, and prescribing their duties.

[*Approved February* 17, 1876.]

(204.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That at the general election next to be held, and biennially thereafter, there shall be elected in each county in this Territory, by the qualified electors thereof, a county prosecuting attorney, who shall hold his office for two years, and until his successor is elected and qualified. Election and term of office.

(205.) SEC. 2. Before entering upon the duties of his office, said prosecuting attorney shall take and subscribe an oath, and give bonds with sufficient sureties to the people of the county conditioned for the faithful performance of his duties, which bonds shall be approved by the probate judge and with the oath be filed with the clerk of the county court of the county for which he is elected. Qualification and bonds.

(206.) SEC. 3. It shall be the duty of said prosecuting attorneys to commence and take charge of prosecutions, for offenses arising under the laws of the Territory in the counties for which they are respectively elected, and if such prosecution is carried to the district court by recognizance, appeal or otherwise, may aid in conducting the prosecution in such court. Duties.

(207.) SEC. 4. When requested, it shall be the duty of the prosecuting attorneys in their respective counties to advise the county court and all other officers of said county, and shall represent said county in all suits and controversies where it shall be interested. Same.

(208.) SEC. 5. The compensation of said attorneys shall be such as may be prescribed or allowed by the county court of their respective counties, either by fixed salary or by fees, as in the discretion of such court may best promote the public interest. Compensation and how paid.

(209.) SEC. 6. Each of said prosecuting attorneys may appoint a deputy or deputies, for whose official acts he shall be responsible, to aid him in performing the duties of his office. May appoint deputy.

(210.) SEC. 7. The county court for the several counties may appoint a prosecuting attorney for the time being and until the office is filled by an election according to the provisions of this act. Temporary appointment.

An Act to create the office of county treasurer in each county of the Territory of Utah, and to define the duties thereof.

[*Approved February* 3, 1852.]

Office created. (211.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That there shall be, and hereby is created the office of County Treasurer in each county of the Territory of Utah.

Election and qualification. (212.) SEC. 2. The treasurer shall be elected by the qualified electors of their respective counties at the time of the general election of the Territory; whose term of office shall be four years, and until his successor shall be elected and qualified; and said treasurer, before entering upon the duties of his office, shall take an oath or affirmation, before the clerk of the county court, to support the Constitution of the United States, and the laws of this Territory; and faithfully discharge the duties of his office, and shall give bonds to the people of their respective counties; the amount of bonds to be prescribed by the county court, with security, to be approved by said court, for the faithful discharge of the duties of his office, which bonds shall be filed in the office of the clerk of the county court. (1)

Duties. (213.) SEC. 3. The county treasurer shall keep an accurate account of all moneys or other property received or disbursed, and shall pay over all demands that shall be legally presented, and shall render a true account, with necessary vouchers for the same, semi-annually to the county court, or whenever it shall be called for by said court, and his office shall be kept at the county seat.

SEC. 4. (2)

An Ordinance in relation to county recorders.

[*Approved March* 2, 1850.]

Election and term of office. (214.) SEC. 1. *Be it ordained by the General Assembly of the State of Deseret:* That a County Recorder shall be elected at the usual place of holding elections in each organized county of this State, whose term of office shall be four years, and until his successor is qualified.

Bond and oath. (215.) SEC. 2. The recorders in their respective counties shall take an oath of office, and give bond and security to be approved by the county court, and filed in the county clerk's office.

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(1) Bond to be approved by probate judge, and filed in his office. See sec. (266.)

(2) Provided for temporary appointment.

Duties. (216.) SEC. 3. It shall be the duty of recorders in their respective counties to provide themselves with good and well bound books suitable for the purpose, and record therein all transfers or conveyances of land or tenements, and all other instruments of writing and documents suitable, necessary and proper to be recorded in a fair and legible manner.

Same. (217.) SEC. 4. The recorders in their respective counties shall also procure and keep a suitable book for the purpose of recording town and city plats, and plats of all surveys of lands, roads and surveys of public works, whenever the same shall be permanently located, and being within their respective counties.

Books to be indexed. (218.) SEC. 5. The books of record shall be indexed in alphabetical order, and free to the examination of all persons, and, upon the filing of any paper for record, the rerecorder shall endorse upon the back thereof the time of receiving it.

An Act in relation to county recorders, and the acknowledgment of instruments of writing.

[*Approved January* 19, 1855.]

Books, etc., to be kept. (219.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That the county recorders in their respective counties, shall keep books in which they shall record deeds and all other instruments of writing, necessary and proper to be recorded by letter, line and figure, precisely as they occur therein, and in a fair, legible manner; city plats and plats of surveys shall be recorded in the same manner; which books he shall duly transmit to his successor in office.

Who authorized to take acknowledgments. (220.) SEC. 2. The judges of the supreme and probate courts, their clerks, the clerks of the district courts, notaries public, the mayors and aldermen of the several incorporated cities, the county and city recorders, and justices of the peace, in their respective jurisdiction are authorized to take the acknowledgment of deeds, transfers and other instruments of writing.

Official signature to be affixed. (221.) SEC. 3. Whenever the acknowledgment of any instruments of writing is made, the officer before whom the acknowledgment is taken shall affix his official signature thereto. The recorder shall certify on each instrument of writing recorded by him, the book, page and date of the record.

Not record transfers without certificate of survey.

(222.) SEC. 4. The county recorder shall not record any land to any person on application or by transfer, until a certificate of the survey has been produced that such land has been surveyed, and such certificate of survey has been approved and countersigned by one or more of the selectmen of the county.

Time allowed to enclose land after survey.

(223.) SEC. 5. Two years shall be allowed, to persons having land surveyed, to enclose the same, and in all cases where labor is expended upon dams, canals, embankments, aqueducts, or otherwise, for the purpose of irrigating said land, amounting to the sum of five dollars per acre, it shall entitle the holder of said certificate of survey to lawful possession: *Provided,* that where companies or associations for irrigating purposes are formed or may hereafter be formed for the improvement of lands, individuals composing said companies or associations shall not lose any right by such associations, but shall be entitled to equal privileges, in the provisions of this act, with individual enterprise; said title shall not be invalidated or nullified, whether said lands be enclosed with fence or not. (1)

SEC. 6. (2)

An Act authorizing certain officers to appoint deputies.

[*Approved February* 16, 1870.]

Certain officers may appoint deputies.

(224.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That the clerks of the various courts, and county recorders of this Territory are hereby authorized to appoint deputies, for whose acts they shall be responsible.

Power of deputies and their fees.

(225.) SEC. 2. Said deputies shall have power to perform all the acts and duties which the principals have right to perform in their official capacities, and to demand and receive the same fees as their principals for so doing.

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(1) Amendment of Jan. 18, 1867.

(2) Repealed Feb. 20, 1874.

An Act to regulate surveyors and surveying.

[*Approved March* 3, 1852.]

(226.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That the office of County Surveyor, be and hereby is created; and that there shall be a county surveyor to be elected in each county by the qualified voters at the next general election, whose term of office shall be two years, and until his successor in office shall be qualified.

County surveyors.

Term of office.

(227.) SEC. 2. The county surveyor shall, before entering upon the duties of his office, take an oath of office, and give bonds and security, to be approved by the probate judge, and to be filed in the office of the clerk of the probate court.

Bond and oath.

(228.) SEC. 3. The county surveyor shall, within thirty days after completing any survey, make true copies or diagrams of the same, and transmit one to the surveyor general, and one to the county recorder; and give a certificate of such survey to the person for whom it was made, describing the tract, block or lot, and number of acres contained; and such certificate shall be title of possession to the person or persons holding the same.

To whom copies of survey transmitted.

(229.) SEC. 4. Where any survey has been made within this Territory, and the bounds cannot be identified, and disputes arise between rightful claimants, respecting said lines and bounds, the parties so in dispute, or either of them, may, by notifying the other party, of his, her, or their intention, have a re-survey of said lines so in dispute, to be re-surveyed by either the surveyor general, or the county surveyor, at the option of the party, or parties so requiring such re-survey. Should the parties or either of them be dissatisfied with such re-survey, they, or either of them, may, at his, her, or their expense, have another re-survey by both the surveyor general and county surveyor, whose duty it shall be to make the re-survey as near like the former survey as they can, and such re-survey shall be final, and establish such bounds.

When re-survey may be had.

(230.) SEC. 5. Where any transfer shall be made of any surveyed lands, or part or parts thereof, it shall be the duty of the transferer to certify in writing such transfer to the person to whom the transfer is made, with a full description of what part or parts, how much or length of line or lines, and number of acres, and the person or persons to whom

Duty of person transferring surveyed lands.

transferred; to legalize a claim to such land, shall within thirty days thereafter cause such transfer to be recorded in the county recorder's office.

Survey void in certain contingencies

(231.) SEC. 6. If any surveyor shall survey land or lands for the purpose of cultivation, where to irrigate it would rob other previously cultivated lands of the needful portion of water, such last survey shall be void for cultivating purposes.

Duty in case of joint enclosure.

(232.) SEC. 7. Whenever a surveyor shall survey a piece of land for a joint enclosure, he shall plot, and number the fence around the survey, noting the length of each person's portion of fence.

SEC. 8. (1)

An Act pertaining to the duties of county surveyors.

[*Approved January* 19, 1855.]

What records and books to keep.

(233.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That each county surveyor shall keep a book, in which shall be recorded all the blocks and lots of each survey by him made; also a record of all certificates by him given, which certificates shall certify the number of block and lot, with the number of acres or square rods in each lot, and to whom given which, when countersigned by one or more of the selectmen, shall be filed in the county recorder's office within thirty days from the date thereof. No certificate shall be valid, unless filed in the recorder's office, as provided for in this act. The book thus kept is hereby made the property of the county, and shall be delivered to his successor in office; said record shall be open to the inspection of any person having an interest therein.

What and when corners to be made.

(234.) SEC. 2. It shall be the duty of each surveyor to make a sufficient corner (of stone or wood) at the southeast corner of each survey by him made, and make a record of said corner on his return diagrams.

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(1) Refers to surveyor general's office, and will be found under that head. See sec. (70.)

An Act concerning county surveyors.

[*Approved January* 18, 1861.]

(235.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That the county surveyors, in their respective counties, may appoint one or more deputies, who, before entering upon the duties of their office shall take the oath of office and give bonds and security in like sum and in like manner as their principals, and any survey or surveys made by such deputy or deputies, when certified to by the county surveyor, shall be valid, the same as if made by the county surveyor himself in person. May appoint deputies.

An Act concerning coroners, justices of the peace and inquests.

[*Approved February* 20, 1868.]

(236.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That a Coroner shall be elected in each county, by the qualified voters thereof, at the general election to be held on the first Monday of August, in the year one thousand eight hundred and sixty-eight, and every second year thereafter, who shall hold his office two years, and until his successor is elected and qualified. When elected.

(237.) SEC. 2. Before entering upon the duties of his office the coroner shall give bonds with security, and take and subscribe an oath or affirmation that he will faithfully perform the duties of his office; said bonds and security must be made to the acceptance of the probate judge and be filed in his office. Bond and oath.

(238.) SEC. 3. It is the duty of the coroner to perform all the duties of the sheriff, in the absence of the sheriff, and in cases where it appears from the papers of any court of record that the sheriff is a party, and where an affidavit is filed with the clerk of the court stating a partiality, prejudice, consanguinity or interest on the part of the sheriff, when the clerk or court shall direct process to the coroner, whose duty it is to execute it in the same manner as if he were sheriff. When to perform duties of sheriff.

(239.) SEC. 4. No coroner shall appear in any court as attorney or counsel for any party, nor shall he become the purchaser, either directly or indirectly, of any property by Shall not appear as attorney or counsel.

him exposed for sale under any process of law, and every such purchase is absolutely void.

Coroner or justice to hold inquests.

(240.) SEC. 5. The coroner or any justice of the peace shall hold an inquest upon the dead bodies of such persons only as are supposed to have died by unlawful means. When he has notice of the dead body of a person supposed to have died by unlawful means found or being in his county or precinct, he is required to issue his warrant to the sheriff or either of his deputies or any constable requiring him to forthwith summons any three qualified electors, that he can the most readily find, to appear before him at a time and place named in the warrant.

Form of warrant.

(241.) SEC. 6. The warrant may be in substance as follows:

Territory of Utah, }
Precinct, }
County. }

To Officer Precinct County:

In the name of the Territory of Utah you are hereby required to forthwith summon three qualified electors of your precinct to appear before me at [name the place] at [name the day and hour or say forthwith] then and there to hold an inquest upon the dead body of there lying, by what means he died.

Witness my hand this day of A. D. 18 .

Signed, A. B., Coroner of County, [or] E. D., Justice of the Peace in Precinct in County.

Duty of officer.

(242.) SEC. 7. The officer shall execute the warrant and make return thereof at the time and place named.

In case juror fails to appear.

(243.) SEC. 8. If any juror fails to appear, the coroner or justice of the peace shall immediately cause the proper number to be summoned or returned from the bystanders and proceed to impanel them and administer an oath in substance as follows:

"You do solemnly swear [or affirm] that you will diligently enquire and true presentment make, when, how and by what means the person whose body lies here dead came to his death, according to your knowledge and the evidence given you: So help you God."

(244.) SEC. 9. The coroner or justice of the peace may issue *subpœnas* for witnesses within his county, returnable forthwith, or at such time as he shall direct, and witnesses shall be allowed the same fees as in cases before a justice of the peace; and the coroner has the same authority to enforce the attendance of witnesses and to punish them and jurors for contempt in disobeying his process as a justice of the peace has.

May issue subpœna.

Oath of witness.

(245.) SEC. 10. An oath [or affirmation] shall be administered to the witnesses in substance as follows:

"You do solemnly swear [or affirm] that the testimony which you shall give to this inquest, concerning the death of the person whose body is here lying dead, shall be the truth, the whole truth and nothing but the truth: So help you God."

When testimony to be written.

(246.) SEC. 11. The coroner or justice of the peace may require the testimony to be written and subscribed to by the witnesses.

Duty of jurors.

(247.) SEC. 12. The jurors, having inspected the body, heard the testimony and made all needful inquiries, shall return to the coroner or justice of the peace their inquisition in writing, subscribed to by them, and stating the matters, so far as found, in substance according to the following suggested form:

Territory of Utah,
Precinct,
County.

An inquisition holden at in Precinct,
County on the day of A. D. 18 , before
Coroner of said County [or Justice of the Peace in
Precinct in said County] upon the body of
[or person unknown] there lying dead, by the jurors whose names are hereto subscribed. The said jurors upon their oaths do say [here state when, how, by what person, means, weapon or accident, he came to his death, and whether feloniously].

In testimony whereof the said jurors have hereunto set their hands the day and year aforesaid.

[The foregoing inquisition must be attested by the coroner or justice of the peace].

(248.) SEC. 13. If the inquisition find that a crime has

When finding not to be made public. been committed on the deceased and name the person whom the jury believe has committed it, the inquest shall not be made public until after the arrest directed in the next section.

Warrant of arrest. (249.) SEC. 14. If the person charged be present, the coroner or justice of the peace may order his arrest by an officer or any other person present, and shall there make a warrant requiring the officer or other person to take him before a justice of the peace.

Same. (250.) SEC. 15. If the person charged be not present and the coroner or justice of the peace believes that he can be taken, the coroner or justice of the peace may issue a warrant to the sheriff and constables of the county requiring them to arrest the person and take him before a justice of the peace, when he shall be dealt with as a person held under a complaint in the usual form.

What warrant to contain. (251.) SEC. 16. The warrant of the coroner or justice of the peace shall substantially recite the transactions before him and the verdict of the jury of inquest leading to the arrest, and such warrant shall be a sufficient foundation for the proceeding of the justice, instead of a complaint.

Where to be returned. (252.) SEC. 17. The coroner or justice of the peace shall return to the probate court the inquisition, the written evidence, and a list of the witnesses who testify material matter.

Disposition of body. (253.) SEC. 18. The coroner or justice of the peace shall cause the body of a deceased person, which he is called to view, to be delivered to his friends, if any be present or within convenient distance; but if not, he shall cause it to be decently buried and the expense to be paid from any property of the deceased, or if there be none, from the county treasury, by certifying an account of the expenses, which, being presented to the county court, shall be allowed by them, if deemed reasonable, or so much thereof as they may deem reasonable, and paid as other claims on the county.

FEES.

Fees.

(254.) SEC. 19. For a view of each body and for taking and returning inquest	$5 00
For a view of each body and for examination without inquest	3 00
Each *subpœna*, warrant or *venire*	25
For each mile traveled to and returning from an inquest or examination	10

The above fees are to be paid from the county treasury where they cannot be obtained from the estate of the deceased.

For all other services the coroner is entitled to the same fees as are allowed to sheriffs in similar cases.

In taking an inquisition, if deemed requisite by the coroner, justice of the peace or jury, one or more physicians or surgeons may be summoned to make a scientific examination and in such cases may be allowed a reasonable compensation instead of witness fees.

SEC. 20. (1)

An Act concerning notaries public.

[*Approved January* 17, 1866.]

SEC. 1. (2)

Bond and oath.

(255.) SEC. 2. Each notary public shall, before entering upon his official duties, take the oath of office and give a bond, with sufficient sureties, to the Territory of Utah, in the penal sum of five hundred dollars, conditioned that he will faithfully perform the duties of his office; said bond to be approved by the secretary of the Territory. (3)

Where commission to be recorded.

(256.) SEC. 3. The commission and oath shall be recorded in the office of the secretary of the Territory; (3) and such bond shall be filed in said office, and may be sued on by any person injured through the unfaithful performance of said notary's duties: *Provided*, that no suit shall be so instituted after three years from the time the cause of such action occurred.

Authorized to administer oaths, etc.

(257.) SEC. 4. Notaries public are hereby authorized to administer all oaths provided for by law; to acknowledge powers of attorney and all instruments of writing conveying or affecting property in any part of this Territory, and elsewhere so far as may be lawful; to take affidavits and depositions; to make declarations and protests, and to do all other acts usually done by notaries public in other States and Territories.

Duty in relation to protests.

(258.) SEC. 5. It is hereby made the duty of a notary public, whenever any instrument in writing is by him protested for non-payment or non-acceptance, to give written notice thereof, as soon as practicable, to the maker and each endorser or security of said instrument; and to personally serve such notice, when the person protested against resides in the same town or city with the notary, otherwise he may forward said notice by mail or other safe conveyance.

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(1) Repeals sec. 18 of an act in relation to justices of the peace, approved Feb. 4, 1852.

(2) Repealed by section 5 of an act of Congress entitled "An act in relation to courts and judicial officers in the Territory of Utah," see p. 56.

(3) As amended by the act of Congress referred to in the above note.

To keep record.

(259.) SEC. 6. Each notary public shall keep a fair record of his official acts, including such notices, the time and manner in which they have been served and the names of all the parties to whom they were directed, and the description and amount of the instrument protested, which record shall be competent evidence to legally prove such notices; and, when required and the fees are paid, he shall give a certified copy of any official record or paper in his office.

Where records to be deposited in case of vacancy.

(260.) SEC. 7. When the office of a notary public becomes vacant, the records of said notary and all the papers relating to his office shall be deposited in the office of the secretary of the Territory; and if said records and papers are not so delivered within thirty days after said vacancy occurs, said secretary of the Territory is hereby authorized and required to take and deposit them as aforesaid; and in either case said secretary of the Territory shall safely keep the said records and papers, and, when requested and the fees are paid, shall give a certified copy of any portion thereof, which copy is hereby made as valid as if it had been given by the aforesaid notary public.

What official seal to contain.

(261.) SEC. 8. In case a notary public uses an official seal, it shall contain the name of the county in which he resides, and he shall therewith attest all his official acts.

CHAPTER V.

OF PRECINCT OFFICERS AND THEIR DUTIES.

SECTION.
262. Justice of the peace and constable to be elected in each precinct.
263. Bonds and oaths of office.
264. Fence viewers to be elected in each precinct.
265. Their duties and fees.
266. Where county and precinct officers to file bonds.

An Act in relation to justices of the peace.

[*Approved February* 4, 1852.]

Election of justice and constable.

(262.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That each precinct in this Territory shall elect one justice of the peace, and one constable, and the same may be increased in any precinct by the county court, whenever they shall deem that the public good requires it.

Bonds and oath of office.

(263.) SEC. 2. Each justice of the peace and constable shall take an oath of office and give bond, with approved securities, in the sum of one thousand dollars, which bond shall be approved by, and filed in the office of, the probate judge of their respective counties; (1) said justices and constables shall hold their offices for the term of two years, and until their successors are elected and qualified, and they shall be commissioned by the governor. (2)

An Act to provide for the election of fence viewers and prescribing their duties.

[*Approved February* 18, 1870.]

When elected and for what term.

(264.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That at the general election to be holden on the first Monday in August next, and every two years thereafter, two Fence Viewers shall be elected in each precinct, whose term of office shall be for two years, and until their successors are elected and qualified.

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(1) As amended by an act approved Jan. 19, 1866. See sec. (266.)

(2) The remaining sections of this act relate to the duties and jurisdiction of justices of the peace and those remaining in force will be found under their appropriate heads. See sec. (1081.)

Duties.

(265.) SEC. 2. The duties of the said fence viewers shall be to determine upon a lawful fence, within the meaning of section four of "An act pertaining to damage done by animals, and defining a lawful fence," approved February seventeen, eighteen hundred and sixty-nine, and they shall examine and give judgment upon any fence within their respective precincts, when required so to do: *Provided*, that they shall receive the sum of twenty-five cents each per hour for service rendered as aforesaid, to be assessed by the said fence viewers upon the parties in whose interest said service shall have been performed.

Fees.

Where county and precinct officers to file bonds.

(266.) SEC. 3. All county and precinct officers made elective at the general election, who are required by law to file bonds, shall give bonds with approved security, to the acceptance of the probate judge of their respective counties, which shall be filed in his office. (1)

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(1) Sec. 2 of an act approved Jan. 19, 1866.

TITLE V.

OF THE MILITIA.

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282. Brigade inspectors and commissaries how appointed. Other staff officers how appointed.
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343. Officers to give bonds.
343*. Power of lieutenant general.

An Act to provide for the further organization of the militia of the Territory of Utah.

[*Approved February* 5, 1852.]

Nauvoo Legion.

(267.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That the militia of the Territory of Utah shall consist of one legion, to be called the Nauvoo Legion.

Lieut. general.

(268.) SEC. 2. The Nauvoo Legion shall be commanded by a lieutenant general, who shall be elected by a majority of the votes given of the commissioned officers of said legion, and commissioned by the governor.

Vacancy of.

In case of a vacancy occurring in the office of lieutenant general, the ranking major general shall take command until the vacancy is filled.

All elections for filling the office of lieutenant general shall be ordered by the governor.

Organization under lieut. general.

(269.) SEC. 3. The organization of said legion into divisions, brigades, regiments, battalions, companies, and districts, shall be carried out under the direction of the lieutenant general.

Staff of lieut. general.

(270.) SEC. 4. The staff of the lieutenant general shall consist of heads of departments, as hereinafter provided for—three aids with the rank of colonel, two topographical engineers with the rank of colonel, a military secretary with the rank of lieutenant colonel, and two chaplains.

Adjt. gen. department of.

(271.) SEC. 5. The adjutant general shall have the rank of brigadier general; and in his department there shall be to each division, a division inspector with the rank of colonel; to each brigade a brigade inspector, to serve also as a brigade major, with the rank of major; and to each regiment, separate battalion, and district, an adjutant with the rank of captain.

Commissary gen. department of.

(272.) SEC. 6. The commissary general of subsistence shall have the rank of brigadier general; and in his department there shall be to each division, a division commissary with the rank of colonel; to each brigade, a brigade commissary with the rank of major; and to each regiment, separate battalion and district, a commissary of subsistence, with the rank of first lieutenant.

(273.) SEC. 7. The quartermaster general shall have the rank of brigadier general; and in his department there shall be so many military store keepers, for the safe keeping and the preserving of the Territorial fortifications and military stores, belonging to this Territory, as the lieutenant general may find it necessary to appoint, not exceeding one to each district. Qr. master gen. department of.

(274.) SEC. 8. In the paymaster general's department there shall be a paymaster general with the rank of colonel; to each division a division paymaster with the rank of major; to each brigade a brigade paymaster with the rank of captain; and to each regiment, separate battalion, and district, a paymaster with the rank of first lieutenant. Paymaster gen. department of.

(275.) SEC. 9. In the hospital department, there shall be a surgeon general with the rank of colonel; to each division a surgeon of division with the rank of lieutenant colonel; to each brigade a surgeon of brigade with the rank of major; to each regiment a surgeon with the rank of captain; and to each separate battalion and district, a a surgeon's mate with the rank of second lieutenant. Surgeon gen. department of.

(276.) SEC. 10. In the color department there shall be two color bearers general with the rank of captain; and to each regiment and separate battalion two sergeant color bearers. Color department.

(277.) SEC. 11. In the music department there shall be a chief of music with the rank of colonel; and to each regiment, separate battalion, and district, a principal musician, with the rank of sergeant major. Music department.

(278.) SEC. 12. There shall be to each regiment a sergeant major and a quartermaster sergeant. Officers for each regiment.

(279.) SEC. 13. The chief of each staff department shall, under the direction of the lieutenant general, have command over all subordinate officers in his department, and shall, from time to time, issue orders and instructions for their government and practice. Satff department.

(280.) SEC. 14. It shall be the duty of the adjutant general to furnish the subordinate officers of his department, and the chief of each of the other departments, all blank forms of returns, precepts, warrants, and proceedings necessary in each department at the expense of the Territory. Duty of adj. gen.

(281.) SEC. 15. Heads of departments shall be appointed by the lieutenant general.

(282.) SEC. 16. Division and brigade inspectors and commissaries of subsistence shall be appointed by the com-

Brigade inspectors and commissaries how appointed.

manders of the divisions and brigades from the officers of the line in their respective commands and shall constitute their staff. Military store keepers shall be appointed by the lieutenant general. Adjutants and commissaries of subsistence of regiments, separate battalions, and districts, shall be appointed by the commanders of such from the officers of the line in their respective commands. Division, brigade, regimental, battalion, and district surgeons and paymasters shall be appointed by the respective commanders of the divisions, brigades, regiments, separate battalions, and districts, to which they are attached, subject to the approval of the lieutenant general.

Other staff officers how appointed.

Duty of adjt. gen.

(283.) SEC. 17. It shall be the duty of the adjutant general to keep in his office a correct rank roll of all the officers of the legion; together with muster rolls of all musters made throughout the legion, as well as a record of all property in charge of the several heads of departments, and the proceedings of the departments, together with a full and correct report of all expeditions, and the expenses accruing thereon.

Duty of heads of departments.

(284.) SEC. 18. It shall be the duty of heads of departments to furnish the adjutant general, on or before the first day of April and the first day of October in each year with a full and correct report of all proceedings and expenditures in their respective departments, together with a report and description of all property in charge of themselves and the subordinate officers of their departments.

Duty of commanders.

(285.) SEC. 19. It shall be the duty of commanders of divisions and brigades, of regiments and separate battalions not attached to brigades or divisions, and of districts, to furnish the adjutant general with correct reports and muster rolls of all company and other musters and drills, within twenty days after such muster or drill. And, on failing so to do, such commander shall be liable to fine or dismissal, or to be cashiered, at the discretion of a general court martial. And it shall also be the duty of such commanders to report all officers under their command who shall neglect or refuse to make said reports and return said rolls to them within the specified time; and such delinquent officer shall be fined, dismissed, or cashiered, at the discretion of a general court martial.

Divisions how officered.

(286.) SEC. 20. A division shall consist of not less than two nor more than four brigades; and may be composed of one brigade of cavalry and one brigade of infantry. And to each division there shall be one major general, one division inspector, one division commissary, one division paymaster, one surgeon of division, and two chaplains.

Brigade how officered.

(287.) SEC. 21. A brigade of cavalry, artillery, light artillery, infantry or riflemen, shall consist of not less than two nor more than four regiments; and to each brigade of infantry there shall be attached one company of artillery; and to each brigade of cavalry, one company of light artillery. To each brigade there shall be a brigadier general, one brigade inspector, one brigade commissary, one brigade paymaster, one surgeon of brigade, and one chaplain.

Regiment, how officered.

(288.) SEC. 22. A regiment of cavalry, artillery, light artillery, infantry, or riflemen, shall consist of not less than four nor more than eight companies; and to each regiment of infantry there shall be two uniform companies, which will supply the place of grenadiers and riflemen. To each regiment there shall be one colonel, one lieutenant colonel, one major, one adjutant, one commissary of subsistence, one paymaster, one surgeon, one chaplain, one sergeant major, one quartermaster sergeant, one principal musician, and two sergeant color bearers.

Separate battalion, how officered.

(289.) SEC. 23. A separate battalion of cavalry, artillery, light artillery, infantry, or riflemen, shall consist of not less than two nor more than four companies. To each separate battalion there shall be one major, one adjutant, one commissary of subsistence, one paymaster, one surgeon's mate, one principal musician, and two sergeant color bearers.

Cavalry company, how officered.

(290.) SEC. 24. A company of cavalry shall consist of not less than twenty-five nor more than fifty-seven privates; to each company of cavalry there shall be one captain, one first lieutenant, one second lieutenant, one third lieutenant, four sergeants, four corporals, and two buglers.

Artillery company, how officered.

(291.) SEC. 25. A company of artillery, light artillery, infantry, or riflemen, shall consist of not less than forty-one, nor more than eighty-nine privates. To each company of artillery, light artillery, infantry, or riflemen, there shall be one captain, one first lieutenant, one second lieutenant, one third lieutenant, four sergeants, four corporals, and two musicians.

Nauvoo Legion. How divided into military districts.

(292.) SEC. 26. The Nauvoo Legion is hereby divided into military districts, as follows, to wit:

1st. The Salt Lake military district shall include all the militia within the boundaries of Salt Lake city.

2nd. The Davis military district shall include all the militia within the limits of Davis county.

3rd. Weber military district shall include all the militia within the limits of Weber county.

4th. The Western Jordan military district shall include all the militia in Salt Lake county west of the Jordan river.

5th. The Tooele military district shall include all the militia within the limits of Tooele county.

6th. The Cottonwood military district shall include all the militia in Salt Lake county, south of the south line of Salt Lake city and east of the Jordan river.

7th. The Utah military district shall include all the militia in Utah county.

8th. The Sanpete military district shall include all the militia within the limits of Sanpete county.

9th. The Pauvan military district shall include all the militia within the limits of Millard county.

10th. The Iron military district shall include all the militia within the limits of Iron county.

Districts, how commanded.

(293.) SEC. 27. Where a battalion, regiment, brigade, or division, or more, is organized within a military district, the ranking officer shall have command of the district. But where such an organization does not exist, in consequence of the too great distances between companies, then the lieutenant general shall appoint an officer to take command of the district, subject to the election and reception of the district, whose rank shall be in proportion to the number of companies therein. If there be no more than one company in the district, then the captain shall be the commander of the district.

Duty of commanders of districts.

(294.) SEC. 28. It shall be the duty of commanders of districts to divide their districts into company districts, and cause that every male citizen within the bounds of such company district, between the ages of eighteen and forty-five years (except such as are exempt by law), shall be enrolled by the captain of the company, and shall perform military duty according to the requirements of this act:

Proviso.

Provided, that no citizen having previously and voluntarily enrolled himself in any other company, and who continues to perform military duty in such company, shall be compelled to be enrolled in such company district.

Company musters.

(295.) SEC. 29. There shall be a muster and inspection of arms of each company as often as two days in each year, on their own company parade grounds, at such times as the lieutenant general or district commanders may order.

Duty of staff and other officers.

(296.) Sec. 30. It shall be the duty of all general, regimental and staff officers to be on parade on the days of all company musters and drills in their respective commands, to encourage and set example to the companies, and see that a uniformity of discipline is carried out throughout the whole, as may be directed by the lieutenant general; and to do and perform such duties as may be assigned them by the lieutenant general, or their district commanders, compatible with their respective ranks.

Delinquencies.

(297.) Sec. 31. Any non-commissioned officer, musician, or private, failing to attend any muster provided for by law, and not remaining at the same for the time appointed, and not having his arms, accoutrements and ammunition, as required by law, shall be liable to forfeit and pay not exceeding the sum of three dollars.

(298.) Sec. 32. All commissioned company officers, for an offense of like nature, shall forfeit and pay not exceeding the sum of six dollars.

Officers.

(299.) Sec. 33. All general and regimental officers, either field or staff, for an offense of like nature, shall forfeit and pay not exceeding the sum of twelve dollars.

Courts martial.

(300.) Sec. 34. All fines, forfeitures and penalties accruing as herein contemplated, shall be collected before courts martial, detailed as follows, to wit:

From company officers, non-commissioned officers, musicians and privates, before a battalion, regimental or district court martial.

From regimental, field and staff officers and non-commissioned staff officers, before a brigade court martial; or if no brigade is organized in the district, before a district court martial.

From general and staff officers of brigades and divisions before a general court martial.

From commanders and staff officers of districts before a general court martial.

Duty of commanders of companies.

(301.) Sec. 35. For the purpose of warning the non-commissioned officers, musicians and privates to any parade or place of rendezvous, required by law, the commandant of each company shall issue his warrant under his hand, to his lieutenants and non-commissioned officers, requiring them respectively to warn all persons within their respective prescribed beats, subject to military duty, enrolled in his company, or within the bounds or his company district, not enrolled in any other company, or all persons named in the warrant, to appear at such parade or place of rendezvous, armed and equipped as the law directs.

Duty of other company officers.

(302.) SEC. 36. Each lieutenant or non-commissioned officer, to whom such warrant is directed, shall warn every person whom he shall be therein required to warn, by reading the warrant or stating the substance thereof in the hearing of such person; or if such person be absent, by leaving a notice thereof at his usual place of abode, with some person of suitable age and discretion, or affixing the same on the outer door of the house, in case no person can be found therein.

Further duties

(303.) SEC. 37. Such lieutenant or non-commissioned officer shall deliver the warrant to his commandant with a return thereon of all persons, by him warned, and the manner of warning them respectively certified to.

(304.) SEC. 38. Such commandant shall deliver the warrant and return, together with his own return of delinquents and delinquencies, to the president of the proper court martial.

Returns of delinquents.

(305.) SEC. 39. The return of such lieutenant or non-commissioned officer, so certified to, shall be as good evidence on the trial of any person, returned as a delinquent, of the facts therein stated, as if such officer had testified to the same before the court martial on such trial.

Returns.

(306.) SEC. 40. Every commandant of a company shall make the like return, and with like effect, of every delinquency and neglect of duty of his lieutenants or non-commissioned officers, either in not attending on parade, or not executing or returning a warrant to them directed, or not obeying the orders of their commanding officers.

Enrollments.

(307.) SEC. 41. Any commissioned officer of a company may, without a warrant, warn any or all of the persons subject to military duty, enrolled in, or within the beat of the company, not enrolled in any other company, to appear at any parade or place of rendezvous. Such warning may be given by him either personally, or by leaving or affixing a notice in the same manner as if given under the warrant of the captain of the company; and his certificate shall be received by any court martial as legal evidence of such warning.

Tavern keepers to give account of persons.

(308.) SEC. 42. All tavern keepers, keepers of boarding houses, persons having boarders in their families, and house keepers, upon their being thereto requested by the commandant of the company within the district limits of which they reside, or by the lieutenant or non-commissioned officer of any such company, having a warrant from such commanding officer, to warn persons to attend any parade, shall give to such commanding officer, lieutenant, or non-commissioned officer, a true account of all persons lodging or boarding with them, and of their names, if known, to the end that such persons as are liable to do military duty, may be warned to rendezvous according to law.

(309.) SEC. 43. If any person, of whom such account is so demanded, shall refuse to give such account and names, or wilfully give a false account, he shall forfeit and pay twenty-five dollars. **Give false account.**

(310.) SEC. 44. For the purpose of preserving order on the day of parade, the militia shall be considered as under arms from the rising of the sun till its setting on the same day, and shall be exempt from arrest on civil process during that time. **Exempt from civil arrest.**

(311.) SEC. 45. Every commandant of a company may put under guard and return to the president of the proper court martial the names of all persons in the company who shall have discharged firearms on such day within one mile of such parade, without the order or permission of a commissioned officer of their respective company, and also arrest or put under guard, and return the names of every commissioned or non-commissioned officer, musician or private, who shall, on such day, refuse or neglect to obey the orders of his superior officer, or to perform such military duty or exercise as may be required, or depart from his colors, post or guard, or leave the ranks without permission from his superior officer; or who shall appear on parade wearing a false face, or other unusual or ludicrous articles of dress, or any arms, weapons, or other implements or things not required by law, and which are calculated to interrupt the peaceable and orderly discharge of duty. **Discharge of firearms.**

(312.) SEC. 46. Any commander, officer of division, brigade, regiment, separate battalion, district, or company present at any parade, is hereby authorized to put under guard or commit to prison for the day, any person or persons who shall, upon or near any parade ground, field, public highway, or any other place occupied by the militia under arms, by means of ludicrous disguises, dress, arms, and instruments, or by any other means disturb the peaceable and orderly proceedings of those under arms. **Disturb the peace.**

Fines.

(313.) SEC. 47. All fines that shall be imposed by any brigade, regimental, battalion, or district court martial, shall be reported by the president of the court martial to the officer ordering it, or to his successor in command, within ten days after such fines shall have been imposed. And the officer ordering the court, or his successor in command, shall give written notice within twenty days after the imposition of the fines (ten days being allowed after such imposition to take an appeal) to the president of the court martial, of the penalties and fines which shall have been by him remitted or mitigated, and of the appeals which shall have been made from his decision; if of a separate battalion, or regimental court martial, to the commandant of the brigade or district; if of a brigade court martial to the commandant of the division or district; and if of a court martial of a district or of a division, to the lieutenant general, which shall be the channel of appeal in all trials by courts martial.

Appeals.

Collection of fines.

(314.) SEC. 48. For the purpose of collecting fines, the president of the court shall, within ten days after the receipt of the written notice aforesaid, make a list of all the persons of whom fines are to be collected, designating the company to which they respectively belong, the sums imposed as fines on each person, and the persons who shall have taken an appeal, and shall draw his warrant under his hand and seal, directed to any constable of any city or county (as the case may be) thereby commanding him to levy such fine or fines, together with his costs, of the goods and chattels, of such delinquents; and if any such delinquent shall be under age, and live with his father or mother, master or mistress, then to levy such fine or fines, with the costs, of the goods and chattels of such father or mother, master or mistress, as the case may be.

Duty of constables.

(315.) SEC. 49. Every such constable to whom any such list and warrant shall be directed and delivered, may execute the same by levying and collecting the fines, or by taking the body of the delinquent, in any city, town, or county in this Territory, and shall make return thereof, within twenty days from the receipt of such warrant, to the president who issued the same.

The execution of such warrant shall be suspended as to those persons who shall have taken an appeal, until the further order of such commandant. If the constable shall not be able to collect the fines or take the bodies within the twenty days prescribed, then the president issuing the warrant may, at any time thereafter, within three years from the time of imposing the fines, issue a new warrant against any delinquent, or renew the former warrant from time to time as it may become necessary.

Responsibility of officers. (316.) SEC. 50. Division, brigade, regimental, battalion, and district commanders, ordering courts martial, are hereby held responsible that all fines, collected by virtue of the decision of such courts martial, shall be paid into the public treasury of the Territory; and are moreover held responsible for the amount of fines failing to be collected through their negligence.

Life guards. (317.) SEC. 51. The battalion of life guards in Salt Lake county shall be an independent battalion, not attached to any brigade or division, and shall be subject at all times to the call of the governor and lieutenant general.

Said corps may adopt such rules for the regulation of equipage, size of horses, uniform, or any rules for the benefit of said corps, that will not contravene any legislative enactment, and subject to the approval of the lieutenant general.

When may drill. (318.) SEC. 52. Said battalion may assemble for muster and drill eight days in each year, six days of which shall be as specified by the commandant of the battalion.

Fines for delinquencies at such musters shall be the same as assessed for delinquencies in other company musters.

Other companies may call out musters. (319.) SEC. 53. Commandants of companies of grenadiers, riflemen, or any other uniform or volunteer company, may, with their consent, call out their respective companies, not to exceed five days in the year, in addition to the musters and drills provided by law for the whole militia of the Territory; subject to the same fines as for other company musters provided by law; and may also adopt such rules as will be wholesome and beneficial to their respective companies, and will not contravene any legislative enactment.

Precedence of companies. (320.) SEC. 54. Precedence of companies in regiments or separate battalions, and of regiments or separate battalions in brigades or districts shall be governed by superiority of discipline, and by regularity of attendance on parades, independent of letter of company, number of regiment, or date of commanding officer's commission; and shall be decided: of companies by regimental or battalion commanders, and of regiments or separate battalions, by brigade or district commanders, subject to reference to the lieutenant general.

Fines for additional musters.

(321.) SEC. 55. All fines collected for additional company musters other than what is provided for the whole militia, may be appropriated for the benefit of the company, separate battalion or regiment in which the fine is collected, in providing said company, separate battalion or regiment, with colors, music, or such other decorations or equipments as may be for the general good of the company.

Fines how appropriated.

(322.) SEC. 56. All fines not otherwise provided for, shall be paid into the public treasury of the Territory, and shall be appropriated to procure blanks of returns, rolls, &c., required in the several military departments, for the establishment of a military school, or for such other purposes that may tend to promote the general welfare of the military cause as the lieutenant general may direct.

District musters.

(323.) SEC. 57. In addition to the musters and drills of companies, two days in the year, there shall be a muster, drill, and inspection of arms, of district commands one day, between the first day of May and the last day in September, in each year; the time, and service to be performed, to be prescribed by the lieutenant general or district commander.

(324.) SEC. 58. All officers of militia shall be commissioned by the governor.

Non-commissioned officers appointed.

(325.) SEC. 59. Non-commissioned company officers shall be appointed by the commanders of companies, and may be removed by them without consent of a court martial.

Officers elected.

(326.) SEC. 60. All commissioned officers (staff officers excepted) shall be elected by a majority of the votes given of the commands to which they are attached.

Commissions, how received.

(327.) SEC. 61. Commissions of officers shall be forwarded to the persons for whom they are intended, as soon as issued, by the adjutant general; and it shall be the duty of all persons receiving the same, to acknowledge such receipt by letter as soon as received, and state his acceptance or non-acceptance of the same. If the appointment and commission are not accepted, the commission shall immediately be returned.

Power of courts martial.

(328.) SEC. 62. Commanders of divisions, brigades, regiments, separate battalions, or districts, may call courts martial for the trial of all officers, non-commissioned officers, musicians, and privates, in their respective commands, and shall have power to enforce, mitigate, or repeal the decisions of such courts martial: *Provided*, that no capital punishment shall be inflicted, nor a commissioned officer dismissed or cashiered, by the sentence of said courts martial.

Proviso.

(329.) SEC. 63. Resignations of officers shall be sent to their respective battalion, regimental, brigade, division, or district commanders, and may be accepted by them, subject to the approval of the lieutenant general: *Provided*, that the name of the officer presenting such resignation shall be continued on the rolls with the appropriate remarks opposite his name until the mind of the lieutenant general is known on the subject: *Provided further*, that in case the acceptance of the resignation of an officer by such commander, is not approved by the lieutenant general, said officer shall be continued in his office, subject to the same rules, laws and regulations as formerly.

Resignation.

Proviso.

Proviso.

(330.) SEC. 64. When an officer shall leave the limits of his district, to be absent for a longer term than one year, the lieutenant general may, on application of two-thirds of the officers of the command to which such absent officer belonged, cause an election to be held in the command, for another to fill his place; and immediately on such election being held, the commission of the absent officer shall become void, and the name of the person appointed to supply his place, shall occupy the place of his name on the rolls; otherwise his name shall be retained, and he may at any future time resume his post in the command.

Vacancies, how filled.

(331.) SEC. 65. When a commissioned or non-commissioned officer, musician or private is accused of a capital offense, it shall be the duty of the accuser to prefer his charge in writing, on affirmation, and present it to the commanding officer of the district, separate battalion, regiment, brigade or division to which the accused belongs; or if such commanding officer is himself the accuser, the charge shall be made out by him in the same manner; and such original charge shall be forwarded by said commanding officer, with his suggestions, or remarks and signature, to the adjutant general's office. It shall be the duty of the lieutenant general, within thirty days after the receipt of such charge at the adjutant general's office to order a general court martial, to consist of not more than twenty-three, nor less than nine members, to be detailed as equally from the several districts of the legion, as the good of the service will allow, for the investigation of the case and the trial of the accused: *Provided*, that nothing herein contained shall be so construed as to prevent courts of inquiry being called in the respective districts, separate battalions, regiments, brigades, or divisions, for the investigation of any charge pre-

Accusation of capital offense.

Proviso

ferred against any officer, non-commissioned officer, musician, or private, in such command.

(332.) SEC. 66. It shall be the duty of every officer, non-commissioned officer, musician, or private, preferring a charge against another, to accompany such charge with a specification which will contain a full and explicit explanation of the offenses of which the accused is charged.

Band of music. (333.) SEC. 67. The lieutenant general may raise and organize a band, which shall consist of not more than fifty members, and shall be officered by a captain, and to every sixteen members, one lieutenant and one sergeant.

Cavalry band. (334.) SEC. 68. The brigadier general of each brigade of cavalry, may raise and organize a band with brass instruments, which shall consist of not more than twenty-five members, and shall be officered by a captain, a first lieutenant, and an orderly sergeant, subject to the order of the division or district commander.

Infantry band. (335.) SEC. 69. The brigadier general of each brigade of infantry may raise and organize a band, with such instruments as will be suitable for the use and service of the corps, which shall consist of not more than twenty-five members, and shall be officered by a captain, a first lieutenant, and an orderly sergeant, subject also to the orders of the division or district commander.

(336.) SEC. 70. The bands herein provided for shall be subject to the same rules, laws, and restrictions, as other volunteer companies of the legion.

Duty of company musicians. (337.) SEC. 71. Company musicians shall be subject to the same rules, laws, restrictions, &c., as non-commissioned company officers, at company muster or drills. When regiments or separate battalions are consolidated, it shall be the duty of the principal musicians of the respective regiments or battalions, to consolidate and take charge of the company musicians, which, when consolidated, shall form the regimental or battalion band of the regiment or battalion to which they belong.

Chief of music, duty of. (338.) SEC. 72. It shall be the duty of the chief of music to furnish each chief of the band, and each principal musician in his department with a copy of all the calls, marches, and quicksteps, to be uniformly used throughout the legion; the expense of which shall be paid out of the Territorial treasury. And it shall further be his duty to see that the same calls are adopted correctly and uniformly throughout the legion.

(339.) SEC. 73. It shall be the duty of commanders of districts to furnish the adjutant general with certified copies of all orders issued by them, or by division, brigade, regimental, or separate battalion commanders in their districts, as well as with the proceedings and results of all courts martial, called and held in their districts, and with all papers and communications that may be of service in preserving a full and correct history of the legion. Commanders furnish reports.

(340.) SEC. 74. The adjutant general shall perform the duties of inspector general; and it shall be his duty to inspect the troops of each district, at least once in each year, unless otherwise ordered by the lieutenant general. Duty of adjt. general.

(341.) SEC. 75. All free male citizens of this Territory shall be subject to military duty, within thirty days after their arrival in any military district of the Territory; except the governor, secretary of the Territory, judges of the supreme, district, and probate courts, selectmen, members and officers of both houses of the Legislature, within twenty days before and after each sitting of the Legislature; the United States marshal and attorney; and such others as may be exempted by the governor, and have received a certificate of exemption from the adjutant general. Subject to military duty, except.

(342.) SEC. 76. The quartermaster general is hereby authorized and instructed to take measures immediately for the erection of a suitable building for the storage and preservation of the public arms, ammunition, wagons, and other ordnance, camp equipage, and property designed for the use and benefit of the legion; and also to cause said property, arms, &c., to be put in immediate repair. And he is further authorized to draw on the Territorial treasury, for the necessary amount to be expended in accomplishing the same. Erection of storage.

(343.) SEC. 77. The adjutant general, the quartermaster general, commissary general, and all others entrusted with public property, are hereby required to give bonds with approved security, which bonds with security to be approved by the Territorial secretary, and filed in his office, conditioned for the faithful discharge of their duties. Officers give bonds.

(343*.) SEC. 78. The lieutenant general shall have power to increase or lessen the limits of military districts, and organize new districts; also to give instructions, when necessary, for the enrollment and organization of new companies, and make such arrangements for the general good of the legion, as he may find necessary, which will be compatible with the provisions of the law. Power of lieut. general.

TITLE VI.

REVENUE.

SECTION.
344. Assessor and collector how appointed.
345. Annual assessment.
346. Rate of Territorial and county tax.
347. County clerk to furnish assessor and collector with books.
348. Assessor and collector make alphabetical list.
349. To present tax list to county court.
350. County clerk to furnish assessor and collector list.
351. Duty of assessor and collector on receiving tax list.
352. Who to keep accounts with assessor and collector.
353. Duty of assessor when persons refuse to pay tax.
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354. May appoint deputies and administer oaths.
355. Duty of assessor and collector in case property is undervalued.
356. Duty of county court when additional revenue required.
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358. To establish an office and give notice of time and place of receiving taxes.
359. What property not taxable.
360. Penalty for assessor and collector not complying with law.
361. Collection of taxes of persons removing, etc.
362. Fees of tax collector.

An Act prescribing the manner of assessing and collecting Territorial and county taxes, and for other purposes.

[*Approved January* 20, 1865.]

Assessor and collector how appointed.

(344.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That annually at its session in December, each county court shall appoint an Assessor, who shall also be the Collector, to assess and collect Territorial and county taxes, and who shall give bonds before entering upon the duties of his office, with approved security, payable to the Territory and county, in at least twice the amount of the taxes to be collected, conditioned for the faithful performance of his duties; and he shall take and subscribe an oath to the like effect; said bond shall be filed with the probate judge, and may be increased whenever the county court shall deem it necessary: *Provided*, that for the current year assessors and collectors may be appointed at any regular or special term of the county court, and until they are so appointed and qualified, existing assessors and collectors are continued in office.

Annual assessment.

(345.) Sec. 2. An annual assessment shall be made on all taxable property in the several counties of the Territory, between the first day of January and the first Monday in June; property shall be assessed at a fair cash value; and such assessment when so made shall constitute a lien on the property assessed, until such tax is paid, or remitted by the county court: *Provided*, that the assessor and collector shall assess and collect a tax upon all taxable property brought into this Territory and offered for sale, after the assessment list is completed, at the rates of the regular assessment for the current year: *And further provided*, that where money may have been assessed and afterwards sent outside the Territory for the purchase of merchandise or any articles whatever, then the assessment on the cash value of such merchandise or articles shall be decreased by the amount of such purchase money.

Rate of Territorial and county tax.

(346.) Sec. 3. A Territorial tax of one-fourth of one per cent. on the assessed value of all taxable property in the Territory shall be collected annually; and a county tax, at a rate prescribed by the county court, not to exceed three-fourths of one per cent. (1) on the assessed value of all taxable property in the county, may be collected annually in each county.

County clerk to furnish assessor with books.

(347.) Sec. 4. As soon as the assessor and collector shall have filed his bonds, the county clerk in each county shall furnish the assessor and collector with a suitable book conveniently ruled throughout, and headed as follows:

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(1) As amended by an act approved Feb. 15, 1876.

Names of Owners or Possessors.	Residence.	Value of Land Claims and Improvements.	Number of Cattle.	Value.	Number of Horses.	Value.	Number of Asses.	Value.	Number of Mules.	Value.	Number of Sheep and Goats.	Value.	Number of Swine.	Value.	Number of Vehicles.	Value.	Number of Clocks and Watches.	Value.	Value of Merchandise.	Value of Stock in Trading and Manufacturing Companies.	Value of Gold Dust and Bullion.	Value of Gold and Silver Ornaments.	Money Loaned and On Hand.	Value of Taxable Property Not Enumerated.	Total Value.	Amount of Territorial Tax.	Amount of County Tax.	Amount Paid.	Name of Payers.	REMARKS.

Assessor and collector to make list.

(348.) SEC. 5. The assessor and collector must make his tax list in alphabetical order, and shall pursue that course in his official duties which, in his judgment, will enable him to complete the assessment in the most uniform manner and in the shortest time; and to aid him therein may, when necessary, leave with any person, at the residence of the person to be assessed, a copy of the aforesaid heading, with the name of the person required to fill it and a reasonable date on or before which it must be returned written on the back thereof; and any person furnished with said list must comply with its requirements.

To present tax list to county court.

(349.) SEC. 6. The assessor and collector shall annually present the tax list to the county court at its June session; and all complaints or error in the assessment may be presented to the court during such session, when they shall be examined and adjudicated: *Provided*, that any person desirous of moving his property out of the county, before the proper time for adjudication of such cases, may give notice to the probate judge of said county, who may immediately cause a special term, if required, of the court to be held, and shall adjudicate all such cases as may be presented.

County clerk to furnish list.

(350.) SEC. 7. Immediately after the adjournment of the June session, the clerk of the court shall write upon the head of the tax list the Territorial and county rate per cent. for that year, and set each person's amount of the Territorial and county tax in the proper columns opposite his name, and furnish it to the assessor and collector, and inform the Territorial treasurer and the auditor of public accounts of the total amount of the Territorial tax, the name of the assessor and collector and the amount allowed for his services, which must be paid by the Territory and county, in proportion to their share of taxes; and safely file the original list with the office records.

Duty of assessor and collector.

(351.) SEC. 8. When the assessor and collector receives the tax list, he shall immediately proceed to collect the same, by requiring of each tax payer his amount of tax, and shall pay the part collected for the county to the county treasurer once a month, or oftener if required by the county court; and the part collected for the Territory to the Territorial treasurer, quarter-yearly or oftener if required by said treasurer; and take receipts for all payments. It shall be the duty of and the Territorial treasurer may instruct the county court to audit the assessor's and collector's books, and compare the same with the auditor's receipts which he may have received; and in all cases of neglect or refusal on the part of the assessor and collector to pay over to the treasurers the taxes collected as provided in this section, the county court is hereby authorized and required to proceed against him in a civil suit on his bonds, and he shall be liable to indictment for embezzlement and, upon conviction thereof, shall be punished by fine in any sum not exceeding twice the amount of the sum so embezzled, or be imprisoned not exceeding five years at daily hard labor: (*Provided*, such labor shall be performed by ball and chain attached, whenever the jailor deems it necessary, or both at the discretion of the court having jurisdiction). The proceeds of such fines to be equally divided between the Territorial and county treasuries.

Who to keep accounts.

(352.) SEC. 9. It shall be the duty of the auditor of public accounts and the clerks of the county courts to keep an account with the assessors and collectors, debiting each collector with the amount of tax, and crediting him with the amounts paid in, the amount remitted by the courts and the compensation allowed for his services.

Duties.

(353.) SEC. 10. In case any person neglect or refuse to pay his tax when required, the assessor and collector is hereby required and empowered to take and sell enough taxable property belonging to the delinquent to pay his tax and the costs of collection. Said property shall be sold, by the assessor and collector, or his deputies to the highest bidder at public sale, after at least six days' public notice shall have been given of the time, place of sale and kind of property to be sold, and said assessor and collector, or his deputies, shall be entitled to the same fees as sheriffs and constables are, for like services: *Provided*, proceedings may be staid at any time by the delinquent paying his tax and the amount of costs already accrued. Auditors' warrants shall be received on Territorial taxes, and county orders on county taxes in the respective counties. (1)

May appoint deputies and administer oaths.

(354.) SEC. 11. If necessary, the assessor and collector may appoint a deputy or deputies to assist him in the discharge of his duties, for whose official acts and compensations he shall be responsible; and the assessors and collectors and their deputies are hereby empowered to administer oaths, when necessary in the assessment of property, and may require any person to give a statement of his property under oath.

Duty of, in case property is undervalued.

(355.) SEC. 12. If at any time after an assessment has been made, it shall appear that any person has undervalued or has not given in a correct statement of his taxable property, the assessor and collector is hereby authorized to assess and collect a tax on said property at double the rates per cent. on the current year, fifty per cent. of the penalty to be retained for the benefit of the assessor and collector, the balance to be paid over as other taxes to the Territorial and county treasurer: *Provided*, that if any collector, by undue means, shall seek to obtain the fifty per cent. herein provided for, he shall be liable to a suit on his bonds for double the amount of the damage done to any individual thereby.

Duty of county court when additional revenue is required.

(356.) SEC. 13. When the public good of any county or any portion thereof requires an expenditure exceeding its revenue, the county court may, at any general or special election, after at least twenty days' public notice has been given, submit to the tax payers of the county or portion thereof, for their approval or disapproval, the object of such expenditure, the amount required, and the rate per cent. necessary to raise the amount; and if, upon counting the votes, it shall appear that two-thirds of the votes polled shall be in the affirmative, the county court may proceed to assess and collect the same in the manner heretofore provided for Territorial and county taxes. Said election shall be held and conducted and returns made in the manner prescribed in an act regulating elections, approved January 3, 1853.

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(1) As amended Feb. 19, 1869.

To hear and examine errors in assessment.

(357.) SEC. 14. The county court shall during its June session examine the tax list and hear complaints for errors in assessment; and if, in their judgment, all or part of any person's taxes ought to be remitted, the clerk of the county court shall write the word remitted against such person's name, with the amount of the remittance, all or in part; and when the examination of the list is completed, the clerk of the court shall forthwith report to the Territorial treasurer and the auditor of public accounts the amount of the Territorial taxes remitted; and said court at its September session shall again examine said tax list and hear petitions for remittances, and proceed as at the June session in regard to remittances, and, on or before the thirtieth day of November, in each year, the assessor and collector shall settle with the auditor of public accounts, furnishing him the amount and name of said person's tax remitted and shall pay over to the Territorial treasurer all delinquent taxes due to the Territory; and the assessor and collector is hereby empowered to collect such delinquent taxes for his own benefit: *Provided*, that the treasurer may extend to the assessor and collector, the time for payment of such delinquencies, at his discretion. (1)

To establish office and give notice, etc.

(358.) SEC. 15. The assessors and collectors in their respective counties, shall establish an office at the county seat, and shall give public notice of the time and place that they will be in attendance to receive taxes, by publishing the same in some newspaper having general circulation in the county, or by posting up the same in one or more public places in each precinct, immediately after receiving the tax list, and it shall be the duty of every person owing taxes to pay the same at the office of the assessor and collector, on or before the first day of November. (1)

What property not taxable.

(359.) SEC. 16. Property belonging to the United States, this Territory, or any county, city, or town thereof, to literary, scientific and benevolent institutions, when used for those purposes, buildings for worship and the grounds and materials and appurtenances thereto belonging, to insane or idiotic persons to the value of one thousand dollars, private libraries, burial grounds and monuments for the dead are exempt from taxation.

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(1) As provided by act of Feb. 19, 1869.

Penalty for neglect of duty. (360.) SEC. 17. If any tax payer or assessor and collector shall wilfully neglect or refuse to comply with any requisition of this act he shall, upon conviction, for each offense be liable to a fine not exceeding one hundred dollars, at the discretion of the court having jurisdiction.

An Act further amending "An act prescribing the manner of assessing and collecting county and Territorial taxes and for other purposes."

[*Approved February* 16, 1872.]

Amendment. (361.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That "An act prescribing the manner of assessing and collecting county and Territorial taxes and for other purposes," approved January twentieth, eighteen hundred and sixty-five, be and the same is hereby amended by adding the following additional sections, viz:—

Collection of taxes of persons removing, etc. In cases where a resident assessed in any county within the Territory of Utah removes to another county in said Territory without having paid the tax or taxes standing against him, it shall be the duty of the assessor and collector of the county from whence the delinquent has removed to report the amount of tax or taxes due from said delinquent to the assessor and collector of the county to which the said delinquent has removed, and the assessor and collector receiving such report of delinquency is hereby authorized and required to collect such delinquent tax or taxes as in other cases provided in section ten of the act to which this is an amendment.

Fees of tax collectors. (362.) SEC. 2. Assessors and collectors who shall collect delinquent taxes, as herein provided, shall be entitled to one-half of the per centage allowed them by the county courts of their respective counties, and shall promptly remit the amount collected under the foregoing section, less said percentage, to the collector from whom is received the report of delinquency, who shall be entitled to percentage amounting to the difference between the amount allowed the collector remitting him the money and the allowance allowed by the county court of the county where the tax originated.

TITLE VII.

OF HIGHWAYS AND BRIDGES.

CHAPTER I. Provides a poll tax for road purposes.
CHAPTER II. Miscellaneous provisions of a general nature.

CHAPTER I.

PROVIDES A POLL TAX FOR ROAD PURPOSES.

SECTION.
363. County courts to divide their counties into road districts, and appoint supervisors. Firemen exempt from poll tax.
364. Supervisor to give bonds.
365. County court to furnish supervisor with list poll tax payers.
366. Supervisor to notify persons whose names are on the list.
367. Duty of persons notified.
368. Supervisor to report to county court.

An Act providing for a poll tax for road purposes.

[*Approved January* 16, 1862.]

Duty of county court.

(363.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That each county court shall, at its next December term, district its respective county into as many portions as may, in its judgment, render it convenient to carry out the provisions of this act most effectively for the general good, and shall annually appoint a supervisor for each district, whose term of office shall be for one year, or until his successor is appointed and qualified. It shall require annually a poll tax, not to exceed two days' labor, or one and a half dollars per day in lieu thereof, of every able-bodied male inhabitant over twenty-one and under sixty years of age; said labor to be performed upon any Territorial or county road within the limits of the county, under the direction of their respective supervisors; and all means, other than labor, accruing from said tax, shall be paid over to the supervisor of the district, to be by him expended to the best advantage upon the roads aforesaid, after reserving therefrom an amount sufficient to remunerate himself for his services, as hereinafter provided. All firemen, belonging to any organized fire department under the ordinances of any city, be and they are hereby exempt from paying poll tax: *Provided*, they present to the proper road supervisors, certificates signed by the foreman and countersigned by the secretary of the company, setting forth that they have performed the work required of them, in said fire department during the year last passed. (1)

Firemen exempt from poll tax.

Supervisors to give bonds.

(364.) SEC. 2. Each supervisor shall give bonds, with security, to be approved by the probate judge or clerk of the county court, payable to the people of their respective counties, for a sum not exceeding five hundred dollars, for the faithful performance of his duties according to the requirements of this act, which bond shall be filed in the office of the clerk of the county court, and shall receive the sum of two dollars for each day's faithful service in the duties of his office, to be paid out of the poll tax of his district.

List to be furnished.

(365.) SEC. 3. It shall be the duty of the county court to furnish each supervisor with a suitable book for his official accounts, containing a list of poll tax payers within his district, so near as may be, together with a statement of the amount of poll tax required of each person liable under the first section of this act, to which the supervisor is authorized and required to add the names of all persons within his district thus liable, whose names may have been omitted.

To notify persons on list.

(366.) SEC. 4. Each supervisor shall, at his discretion, notify so many persons, whose names are on his list, as he may deem practicable, to appear at such time and place as their services may be required, with appropriate tools for the kind of work to be performed, giving the parties at least three days' notice of such requirement. When teams may be required, the supervisor shall negotiate for the same at an equitable rate.

Duty of persons notified.

(367.) SEC. 5. Any person notified, as provided by section four, desirous of making other pay than labor, may give the supervisor notice accordingly; and if he pay the amount of his tax for the current year before the day he has been required to perform the labor, he shall be justified in non-appearance; but, otherwise, the supervisor may, as such, sue and collect the same as an action of debt, and no property shall be exempt from execution on judgment so recovered.

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(1) As provided by acts of Feb. 18, 1870, Feb. 16, 1872 and Feb. 16, 1876.

(368.) SEC. 6. Each supervisor shall, at the December term of the county court, annually make a full report to said court, of the amount of labor performed, the amount collected in other means, and in what manner expended, with the amount and kind of means on hand. To report to county court.

CHAPTER II.

MISCELLANEOUS PROVISIONS OF A GENERAL NATURE.

SECTION.
369. Penalty for obstructing or injuring highway or bridges.
370. Penalty for obstructing highway by camping in.
371. Penalty for collecting toll without authority.
372. Relative to passing of teams.
SECTION.
373. Same.
374. Penalty for violation of this act.
375. Water sect crossing highway must be bridged.
376. Duty of supervisors in case persons refuse or neglect to comply with preceding section.

An Act for the protection of the public thoroughfares.

[*Approved February* 19, 1869.]

(369.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That if any person shall obstruct, injure or destroy any part of a public road or thoroughfare, or any work, bridge or fixture attached to, or in use upon the same, the person so offending shall, for every such offense, be liable to civil suit for the recovery of damages, and shall also be subject to indictment; and, upon conviction, shall be punished by fine not exceeding five hundred dollars, or imprisonment not exceeding six months, or both, at the discretion of the court. (1) Penalty for obstructing highway or bridge.

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(1) See penal code sec. (2166.)

Penalty for obstructing by camping.

(370.) SEC. 2. Any proprietor, agent, wagon master or teamster, in charge of any train, wagon or wagons, obstructing the travel on any public road or thoroughfare by camping therein or otherwise unnecessarily causing delay, shall be liable to a fine of not more than one hundred dollars, and be liable for all damages and costs at the discretion of the court having jurisdiction.

Penalty for taking toll without authority.

(371.) SEC. 3. Any person collecting toll upon any road or public thoroughfare, without authority of law, shall be liable for all damages sustained by any person, and shall be liable to a fine of not more than one hundred dollars.

An Act regulating the passing and meeting of teams on the public highways.

[*Approved March* 3, 1852.]

Relation to passing of teams.

(372.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That whenever it is necessary for a fast traveling team to pass a slower one, it shall be the duty of the teamster of the slow team to give the other a convenient opportunity to do so, if it can be done without endangering his own.

Same.

(373.) SEC. 2. Whenever teams of any kind meet, each shall turn to the right, so as to give the other half of the traveled part of the road, whenever it can be done with safety.

Penalty for violation.

(374.) SEC. 3. Any person neglecting to conform to the provisions of this act shall be liable to pay all damage accruing therefrom, and be fined not exceeding one hundred dollars.

An Act providing for the bridging of ditches or sects leading across the highways.

[*Approved March* 3, 1852.]

Water sect crossing highway must be bridged.

(375.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That if any person or persons shall have taken or may hereafter take water out of the natural stream or sect where it is wont to flow, and conduct the same or any part thereof across any public highway or road by means of a ditch or sect, any person or persons so conducting water shall be required to make or cause to be made a good and sufficient culvert, or gravel ford, or bridge over such ditch or sect, and kept the same in repair where the same crosses any such public road or highway, to the acceptance of the supervisor of the district where the ditch or sect shall have been made.

Duty of supervisor.

(376.) SEC. 2. If any person or persons so conducting water shall neglect or refuse to make the necessary bridge, culvert, or ford, agreeably to the provisions of this act, then it shall be the duty of the supervisor to make or cause to be made a suitable bridge, culvert, or ford across the ditch or sect at the expense of the person or persons so offending, and may recover the same by a suit at law before any court having jurisdiction in the matter.

TITLE VIII.

OF THE REGULATION OF TRADE IN CERTAIN CASES.

SECTION.
377. When private property liable for partnership debts.
378. Assignment by partner to secure firm indebtedness valid.
379. Construction of preceding sections.
380. Lawful interest when interest not specified.
381. Use of note, check, etc., as lawful money forbidden.
382. Construction of former section.

An Act concerning partnership.

[*Approved January* 14, 1857.]

When private property liable for partnership debts.

(377.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That the private property of persons engaged in co-partnerships shall be held liable for the debts of the firm, when the partnership property shall prove insufficient to pay them.

What assignment valid.

(378.) SEC. 2. The assignment of any partner in trade, made to secure or satisfy a creditor of such firm, shall be deemed valid in law.

Construction of former section.

(379.) SEC. 3. This act shall not be so construed as to authorize the assignment of any of the effects of such co-partnership to satisfy the individual claim of any of the parties, or other than such debts as are incurred for the effects or proceeds thereof thus assigned.

An Act in relation to interest.

[*Approved February* 19, 1869.]

What interest lawful, when no interest specified.

(380.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That it shall be lawful to take ten per cent. interest per annum, when the amount of interest has not been specified or agreed upon.

An Act to prohibit the use of certain paper as money.

[*Approved January 22, 1864.*]

Use of note, check, etc., as lawful money forbidden.

(381.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That any person, private corporation, firm or association issuing or circulating any note, check, memorandum, token or other obligation for the use as money in lieu of lawful money or other lawful medium of exchange, shall be deemed guilty of a misdemeanor, and shall, on conviction thereof in any court having jurisdiction, be punished for each offense by fine not exceeding one thousand dollars, to be paid into the Territorial treasury, or by imprisonment not exceeding six months, or by both fine and imprisonment.

Construction of former section.

(382.) SEC. 2. This act shall not be construed to in any manner apply to Territorial, county, or city paper, nor to prevent any person from returning the class of paper prohibited in this act, but issued or in circulation previous to the time this act takes effect, to the person, corporation, firm or association purporting to have issued it; and if said person, corporation, firm, or association refuses or neglects to pay or redeem the aforesaid paper when it is presented for payment, or to make satisfactory arrangements for paying or redeeming it, he shall, in addition to the amount claimed on the paper so returned, be liable for all loss that may accrue through such neglect or refusal; and the interest on the aforesaid amount shall be calculated and paid at the rate of six per cent. per month during the time of such neglect or refusal.

TITLE IX.

OF THE INTERNAL POLICE OF THE TERRITORY.

CHAPTER I. Of the manufacture and sale of intoxicating liquors.
CHAPTER II. Of butchering and meat markets outside limits of incorporated cities.
CHAPTER III. Of damage done by animal, and defining a lawful fence.
CHAPTER IV. Establishment of pounds and disposal of estray animals.
CHAPTER V. Of certain animals running at large.
CHAPTER VI. Of the removal or burial of dead animals.

CHAPTER I.

OF THE MANUFACTURE AND SALE OF INTOXICATING LIQUORS.

SECTION.
383. Sale and manufacture of spirituous, etc., liquors without license forbidden.
384. County courts authorized to grant licenses. Proviso.
385. To require payment of license in advance. License to be for any time not over one year.
386. The place where and the kind of liquors to be manufactured, etc., must be stated in the license.
387. Not transferable unless sanctioned by county court.
388. Penalty for violation of preceding sections.
389. Penalty for selling liquor on Sunday.
390. This act not to interfere with rights of incorporated towns and cities.

An Act regulating the manufacture, sale or other disposal of intoxicating liquors.

[*Approved January* 20, 1860.]

Sale and manufacture of spirituous, etc., liquors, without license forbidden.

(383.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That, on and after the first Monday of March, eighteen hundred and sixty, no person shall be permitted to manufacture, sell, barter or otherwise dispose of any spirituous, vinous or malt liquors, without first obtaining license therefor, as hereinafter provided.

County courts authorized to grant licenses. Proviso.

(384.) SEC. 2. The county courts in their respective counties are hereby authorized to grant licenses, as contemplated in the first section of this act: *Provided*, always, that said courts shall be fully satisfied that the applicant or applicants are of good moral character, safe and proper persons to be entrusted with the aforesaid business, and that it is expedient for the public good to grant such licenses.

County court to fix the price of license, and require payment in advance.

(385.) SEC. 3. Said county courts shall fix the price of any and every such license by them granted, and shall require payment for the same invariably in advance; upon the applicant's presenting the county treasurer's receipt for the sum required by the court for such license, the said court may issue or cause to be issued the desired license, for any term not exceeding one year.

The place where and the kind of liquors to be manufactured to be stated in the license.

(386.) SEC. 4. The place where any liquors named in the first section of this act are intended to be manufactured, sold, bartered or otherwise disposed of, shall be named or described in the license; which license shall also state the kind or kinds of liquors to be manufactured, sold, bartered or disposed of; and said county courts may annul any such license at pleasure for a violation of this act, or the terms of the license, or whenever they shall deem the public good requires it.

License not transferable without sanction of county court.

(387.) SEC. 5. No such license shall be transferable, unless sanctioned by the county court; and the said courts shall cause to be endorsed on the back of every such license granted by them these words, "Not transferable, unless sanctioned by the county court," which shall be officially signed by the clerk.

Penalty for violation of the preceding sections.

(388.) SEC. 6. If any person shall violate the provisions of any of the preceding sections of this act, he shall forfeit and pay, for the use of the county wherein such violation shall have been committed, upon complaint of any citizen of the county before any justice of the peace having jurisdiction, any sum not exceeding one hundred dollars for each and every such violation, to be recovered as an action of debt.

Penalty for selling on Sunday.

(389.) SEC. 7. If any person shall barter, sell or dispose of any intoxicating liquors on the day of the week commonly called Sunday, he shall forfeit and pay, for the use of the county wherein such offense shall have been committed, any sum not exceeding twenty dollars for each offense, upon complaint of any citizen thereof, to be recovered as provided for in the sixth section of this act.

Not to interfere with rights of incorporated towns and cities.

(390.) SEC. 8. No provision of this act shall be so construed as to interfere in any way with the rights of the municipal authorities of incorporated towns and cities.

CHAPTER II.

OF BUTCHERING AND MEAT MARKETS.

SECTION.
391. No person to erect slaughter house or commence business of butchering, or keeping meat market without license.
392. Licensed persons to keep books, etc.

SECTION.
393. License to be paid quarterly into county treasury.
394. Penalty for violation.
395. Limitation of the act.

An Act in relation to butchering and meat markets outside the limits of incorporated cities that are acting under their charters.

[*Approved January* 11, 1865.]

No person to erect slaughter house or commence business of butchering or keeping meat market without license.

(391.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That no person shall be allowed to erect a slaughter house or yard, or to commence the business of butchering or keeping a meat market, without first obtaining a license therefor from the county court of the county in which such business is designed to be carried on.

Persons licensed to keep books, etc.

(392.) SEC. 2. All persons so licensed as butchers shall keep a book in which they shall record a faithful description of the age, size and colors of all cattle by them killed, with the brands and ear marks thereon, together with the name of the person from whom received and the time when killed, which book shall be open to the inspection of the public.

License to be paid quarterly into county treasury.

(393.) SEC. 3. All persons who receive license from the county court for establishing a butchery or meat market, shall pay quarterly in advance into the county treasury such sum as may be deemed necessary or sufficient by the county court of the proper county.

Penalty for violation.

(394.) SEC. 4. Any person violating this act shall upon conviction thereof, pay a fine not to exceed one hundred dollars for each offense.

Limitation on this act.

(395.) SEC. 5. Nothing in this act shall be so construed as to interfere with any incorporated city.

CHAPTER III.

OF DAMAGE DONE BY ANIMAL AND DEFINING A LAWFUL FENCE.

SECTION.
396. Owners of animals liable for damages done by them.
397. Former section inoperative in certain cases.
398. In certain cases people may vote to build fence and allow cattle to run at large.

SECTION.
399. What constitutes a lawful fence.
400. Penalty for throwing down fence of another.
401. Proportion of division fence to be built by each joint owner.

An Act pertaining to damage done by animals, and defining a lawful fence.

[*Approved February* 17, 1869.]

Owners of certain animals liable for damages done by them.

(396.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That owners of horses, mules, cattle, hogs, sheep, goats and other domestic animals, shall be held liable to pay all damages done by said animals upon the premises of other persons, whether said premises be protected by fence or not.

Former section inoperative in certain cases.

(397.) SEC. 2. Upon petition of any public herdsman, or of two-thirds of the settlers in any isolated region, in any county, setting forth that it is better adapted to grazing than to other agricultural purposes, if the county court of such county so decide, then the first section of this act shall be inoperative within said specified region, during such time as said court in their judgment may determine.

(398.) SEC. 3. Any county or portion thereof may, at a general or special election called for that purpose by the

By vote at election called for that purpose, fences may be built and stock run at large.

county court, declare by vote of two-thirds of its legal voters in favor of fencing their farms, lots or yards, and allowing their stock to run at large, or who have so declared by vote. In such case, the first section of this act shall be inoperative, during any period decided upon by such vote: *Provided*, the stock owned in any such county or specified region thereof, shall be liable for all damages they may do to any crops growing in an adjoining county, or part of a county, that may not have declared by vote its exemption from the provisions of the first section of this act.

Lawful fence defined.

(399.) SEC. 4. All fence four and a half feet high, in good repair, consisting of rails, poles, boards, stone, or other suitable material, and all fence of any description whatever, which shall, in the judgment of two or more fence viewers be equal thereto, shall be deemed a lawful fence; and all animals breaking over or through such lawful fence, shall be held liable for all damages.

Persons throwing down fence, etc., and leaving same open, guilty of trespass.

(400.) SEC. 5. Any person or persons, who shall throw down fence or open bars or gates into any enclosure other than their own or into any field owned by joint occupancy, and leave the same open, shall be deemed guilty of trespass, and on conviction thereof, shall be liable to the owners of trespassing stock for all damages thereby sustained, and may be fined in any sum not exceeding five dollars.

Proportion of division fence to be built by each joint owner.

(401.) SEC. 6. When two or more persons shall agree to fence in a joint enclosure, or to build a division fence or fences, each party shall be required to build his portion of lawful fence, according to the amount of land enclosed, and keep the same in repair, and if either party shall neglect or refuse so to do, he shall be liable, to the owners of trespassing stock, for all damage done in consequence of said neglect.

CHAPTER IV.

ESTABLISHMENT OF POUNDS AND DISPOSAL OF ESTRAY ANIMALS.

SECTION.
402. County court to provide pounds, etc.
403. Appointment of poundkeeper and term of office.
404. Number and designation of pounds.
405. Duty of poundkeepers.
406. Unclaimed animals to be registered. Posting notices, etc.
407. District poundkeeper to keep records.
408. Duty of district poundkeeper. Notice and proceeds of sale.
409. Appraisal of damages. Proviso. New appraisal.
410. Any person may take up cattle.
411. Penalty for not delivering animals to poundkeeper.
412. Interference or rescue.
413. Fees.
414. Records and reports.
415. Estrays defined and how dealt with.

An Act establishing district and precinct pounds and prescribing regulations for conducting the same, and for disposing of estray animals.

[*Approved February* 13, 1872.]

County courts to provide pounds, etc.

(402.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That the county court of each county is hereby authorized to provide and keep in constant repair a good and substantial pound in each precinct, and furnish suitable blank books for the use of the poundkeepers as hereinafter provided.

Appointment of poundkeepers.

(403.) SEC. 2. Each county court shall, at its March term, 1872, and biennially thereafter at the March term, appoint a poundkeeper for each precinct in which a pound may be provided, who shall take an oath of office, and file bonds, with approved security, conditioned for the faithful performance of the duties thereof; the amount of bond and approval of securities shall be determined by the county court, and the bond filed with the clerk of the county court. Said poundkeeper's term of office shall continue until his successor shall be appointed and qualified.

Qualification.

Duration of office.

Number of pounds.

(404.) SEC. 3. Each county court shall designate one and not more than four precincts in the county, where animals delivered pursuant to this act shall be taken and disposed of, as hereinafter provided, and said precinct pounds shall be known in this act as district pounds, and the keepers thereof as district poundkeepers.

Designation.

Duty of poundkeeper.

(405.) SEC. 4. Each precinct poundkeeper shall receive and take good care of all animals committed to his charge, and use due diligence to find the owner or owners thereof, by record of brands and otherwise, and shall receive and file all bills of damage, duly presented, and enter the amounts in the pound book, which shall be open to the inspection of the public; he shall not deliver any animal to the owner until all costs and damages are paid or satisfactorily arranged for.

Unclaimed animals to be registered.

(406.) SEC. 5. Any animal remaining unclaimed two days from the time of commitment, shall be registered in the pound book, which registration shall set forth when received, from whom, where found, amount of damage done, kind of animal, approximate age and color, stripes, marks, brands and such other description as may aid the owner to find his animals; true copies of which the poundkeeper shall post up, within three days from the time of its being impounded, in two of the most conspicuous places in his precinct, stating that if it be not claimed and taken away within five days thereafter, said animal will be forwarded to the nearest district pound as provided in section three of this act. It shall be the duty of said precinct poundkeeper to deliver to the district poundkeeper all animals remaining unclaimed as above set forth, together with all bills of costs and damages that may have accrued thereon.

Posting notices.

Animals to be delivered to district pound.

District poundkeeper to keep records, etc.

(407.) SEC. 6. The district poundkeeper shall receive and receipt for all animals delivered to him by precinct poundkeepers, and enter upon his registry when said animal or animals were received, from what pound or person, amount of damage and cost, together with a full and complete description of each animal, including marks, brands and approximate age.

Duties of district poundkeeper.

(408.) SEC. 7. Each poundkeeper shall provide forage or pasturage, or place said animals in the care of a responsible person, and the poundkeeper of each district pound shall forthwith advertise for sale by posting notices in two of the most conspicuous places in his district and by advertising one or more times in some newspaper having general circulation in this Territory, all animals delivered to him by precinct poundkeepers, and such as may have been in his custody, as provided in section five of this act.

Notice of sale.

Said notices shall state the time and place of sale, and that if not claimed and taken away within ten days from the date thereof, he will expose them at public sale and sell them to the highest responsible bidder, the proceeds of said sale, after deducting costs and damage, he shall pay into the county treasury, subject to the orders of the owners of said animals, if applied for within six months from the date of sale; if not applied for by the owners within that time, the treasurer shall pass the same to the credit of the common school fund in his county. Proceeds of sale.

(409.) SEC. 8. All damages done by any animal trespassing shall be forthwith appraised by any disinterested voter, who may make a reasonable charge for such service. Said appraisal shall set forth in writing, the time and place of the damage, the name of the person so damaged, and, if known, the name of the owner of the animal, and, so far as may be, the kind and description of the animal; which amount if not paid or satisfactorily arranged for by the owner, or if the owner be not known, shall, together with the animal, be placed under the charge of the precinct poundkeeper: Appraisal of damages.

Provided, that if the owner deem the appraisal too high, said owner may choose another appraiser, who, with the first, may make a new appraisal; or when they cannot agree, they two may choose a third, and they proceed and make another appraisal. New appraisals.

(410.) SEC. 9. Any animal found doing damage may be taken up by any person, and if the owner cannot be found, or if found shall refuse to pay all cost and damage, said animal shall be forthwith taken to the precinct pound, and delivered to the keeper thereof, and said animal may be holden and sold as provided in this act. Any person may take up cattle.

(411.) SEC. 10. Any person other than a poundkeeper taking up an animal under the provisions of this act, and retaining it more than three days, shall be liable to a fine not exceeding one hundred dollars for each animal so retained, and to lose all damages that may have accrued thereon. Penalty for not delivering animals to the poundkeeper.

(412.) SEC. 11. Any person taking his own animal, or that of any other person, out of the custody of a person holding the same for damage done by it, or out of any pound by stealth or by force, or shall interrupt or hinder any one while in the discharge of his duty, under this act, may be fined in any sum not exceeding one hundred dollars at the discretion of any court having jurisdiction. Interference or rescue.

(413.) SEC. 12. Fees for impounding and registering shall not exceed one dollar a head for horses, mules, cattle Fees.

or swine, nor ten cents for goats or sheep; one-half of which shall be paid into the county treasury. Fees for feeding animals shall be governed by the price of forage and pasturage at the time and place of feeding the same. Fees for making inquiries for owners, and driving and delivering animals to the district poundkeepers, and for advertising, shall not exceed a reasonable compensation.

Records and reports.

(414.) Sec. 13. All poundkeepers are hereby required to keep a book or books, in which they shall keep an accurate account of all receipts and disbursements, and shall make a full and detailed report of their proceedings, showing the number of animals sold and amounts sold for, and amounts paid for forage, pasturage, advertising, expenses of driving and sale, to the county court, semi-annually, or oftener, if required by said court, and they shall pay into the county treasury all funds in their hands belonging to the county, as they may be directed by said county court.

Estrays defined.

(415.) Sec. 14. All horses, mules and cattle over eighteen months old, not branded with a recorded mark or brand, and which shall be running at large, shall be, and are hereby declared to be estrays; and any animal which is marked or branded, the owner of which, after reasonable search, cannot be found, and which has been running on any range for one year, is hereby declared to be an estray.

Estrays, how dealt with.

It shall be the duty of the nearest precinct poundkeeper, where such estray animal or animals usually run, to take up said animal or animals, and dispose of the same in the manner as is provided in sections five and seven, of this act, for animals found doing damage.

CHAPTER V.

OF CERTAIN ANIMALS RUNNING AT LARGE.

SECTION.
416. Penalty for stallions, rams, jacks or ridgils running at large.
417. How this act avoived.
418. County court to provide brands for poundkeepers. Brand evidence of sale.
SECTION.
419. Diseased sheep or cattle to be removed by owners.
420. Animals not to be mingled in driving. Penalty.

An Act pertaining to certain animals running at large, and requiring poundkeepers to brand animals sold by them, and for other purposes.

[*Approved February* 20, 1874.]

Stallions, rams, jacks or ridgils running at large.

(416.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That after the first day of March, A. D. 1874, the owner of any stud horse, jack or ridgil, over eighteen months old, or any ram over three months old, who shall permit the same to run at large within the limits of, or on the summer range of any city, town or settlement in this Territory, shall be liable to pay a fine of not less than one dollar nor more than twenty-five dollars for each offense, which fine may be recovered in any court having jurisdiction, and shall be paid into the county treasury for the benefit of common schools.

Penalty.

How this act may be avoided.

(417.) SEC. 2. If two-thirds of the voters of any county or isolated part of a county shall desire, and the county court so decide, then the provisions of the preceding section shall be inoperative in such county, or part of a county, during such time as said court may determine.

County court to provide brands for poundkeepers.

(418.) SEC. 3. It is hereby made the duty of each county court in this Territory, to provide a suitable recorded brand for each district poundkeeper in the county, which shall be placed legibly on all animals sold by virtue of this act, or an act entitled "An act establishing district and precinct pounds and prescribing regulations for conducting the same, and for disposing of estray animals," on such part of the animal as may be designated by the recorder's certificate, and such brand when so placed, shall

Brand evidence of sale.

be evidence of the legal sale and ownership of said animals.

Diseased sheep or cattle to be removed by owners.

(419.) SEC. 4. Should any sheep or cattle have any contagious disease, the owners of such sheep or cattle are hereby required immediately to remove them to some place where they cannot endanger the health of other sheep or cattle, or may be compelled to pay for all damages that may accrue.

SEC. 5. (1)

Animals not to be mingled in driving.

(420.) SEC. 6. Any person driving animals, shall use due diligence to prevent driving those not in his care, and if he cannot prevent such animals from mingling with those in his care, he shall leave them at his own expense in the first estray pound, or yard, or enclosure for animals that he can obtain, and notify the owner, if known, and if not, some resident, of the number, kind, and brief description of the animals which have mingled with his, and where he has left them. Any person failing to comply with the provisions of this section, shall be held responsible for all damage, and may be fined in any sum not exceeding twenty-five dollars for such neglect.

Penalty.

CHAPTER VI.

OF THE REMOVAL OR BURIAL OF DEAD ANIMALS.

SECTION.
421. At whose expense offensive dead animals may be removed or buried.
SECTION.
422. Directions with regard to removal.
423. Penalty.

An Act providing for the removal or burial of dead animals.

[*Approved February* 18, 1870.]

At whose expense offensive dead animals may be removed or buried.

(421.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That all horses, cattle, mules and sheep or other animals, which shall have died within the limits of any town, or settlement, or near any main traveled Territorial or county road of this Territory, shall be removed, or buried within two days from the death of said animals by the owner thereof, or the person having it in charge at the time of its death, but if such person cannot be found, then at the expense of the county in which the said town, settlement or roads are situate. If within the incorporated limits of a city, then at the expense of said city.

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(1) Superseded by sec. 192 of an act to establish a penal code. See sec. (2022.)

Directions with regard to removal.

(422.) SEC. 2. When any animal is left unburied it shall be taken one-half mile from any town or settlement, and one-quarter of a mile from any main traveled Territorial or county road, and twenty rods from any spring, running stream, or water ditch, and it shall be the duty of all sheriffs, constables and city marshals of this Territory to see that the provisions of this act are carried into effect: *Provided,* that any citizen may bury or remove such animals and collect pay therefor from the owner if known, or from the county when the owner is not known.

Penalty.

(423.) SEC. 3. Any person refusing or neglecting to comply with the requirements of this act shall upon conviction thereof, before any acting justice of the peace, be fined in a sum not exceeding ten dollars, the expense of removing or burying said animal and cost of suit.

TITLE X.

OF THE ENCOURAGEMENT OF AGRICULTURE.

CHAPTER I. Incorporating Deseret Agricultural and Manufacturing Society.
CHAPTER II. Establishing a bureau of statistics.

CHAPTER I.

INCORPORATING DESERET AGRICULTURAL AND MANUFACTURING SOCIETY.

SECTION.
424. Society incorporated.
425. Officers of the society.
426. President and directors to be body corporate.
427. May make by-laws, etc.
428. Shall hold annual exhibition, etc.
429. Majority of board quorum for transaction of business.
SECTION.
430. Appropriation for.
431. Condition of membership.
432. Fund created for importing improved breeds of sheep.
433. Society to make report to Legislative Assembly.
434. Resolution accepting grant of land for benefit of agriculture, etc.

An Act incorporating the "Deseret Agricultural and Manufacturing Society."

[*Approved January* 17, 1856.]

Society formed and chartered.

(424.) SEC. 1. With a view of promoting the arts of domestic industry, and to encourage the production of articles from the native elements in this Territory, *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That the "Deseret Agricultural and Manufacturing Society" be formed and chartered as follows:

Officers of the society.

(425.) SEC. 2. There shall be a president and eleven directors who shall, in the first instance, be elected by the joint vote of the Legislative Assembly, and may elect a treasurer and secretary, and such other officers as they may deem necessary.

Name and style of corporation.

(426.) SEC. 3. Said board of president and directors are hereby constituted a body corporate, with perpetual succession; and shall be known by the name and style of "The Deseret Agricultural and Manufacturing Society," and shall have power to sue and be sued, defend and be defended in all courts of law or equity; and may have a seal which they may use and alter at pleasure.

(427.) SEC. 4. Said society have power to make, establish and carry out all needful by-laws, not conflicting with the Constitution of the United States and the laws of this Territory; and to do and perform all acts necessary for the proper exercise of the powers herein conferred, and for promoting the objects contemplated in this act. May make by-laws, etc.

(428.) SEC. 5. They shall hold an annual exhibition at Salt Lake city, or at such other place or places as they shall deem proper, of all such agricultural products, stock and domestic manufactured articles as, in their opinion, will be best calculated to stimulate the people of this Territory in industrial pursuits, and best subserve the cause of domestic industry; and shall award premiums for the best specimens of all such articles and animals as they will permit to be entered in the lists for competition; and shall annually publish a list of what they will consider entitled to premiums and fix the rate and award premiums as they shall deem proper: *Provided*, that other articles than those included in the list shall be admitted and arranged for by the board, and be exhibited under their direction. Shall hold annual exhibition. Award premiums, etc.

(429.) SEC. 6. A majority of said board shall form a quorum to do business, may fill vacancies in the board, and fix the manner and rate of the admission of members to said society. Quorum for transaction of business.

(430.) SEC. 7. For the purpose of starting this enterprise and aiding the president and directors in carrying out the objects contemplated in this act, the sum of fifteen hundred dollars is hereby appropriated, to be drawn by the treasurer of said society, and expended by the board in awarding premiums for the best specimens of native productions on exhibition for premiums under their direction. Appropriation

(431.) SEC. 8. No person can become a member of this society, or be entitled to receive any premium, without complying with such rules and terms of admission as shall be established by said board. Condition of membership.

An Act pertaining to sheep.

[*Approved February* 3, 1869.]

SEC. 1. (1)

Fund created for importing improved breeds of sheep.

(432.) SEC. 2. That the sum of five thousand dollars is hereby appropriated, out of any moneys in the Territorial treasury, not otherwise appropriated, to be drawn and expended by order of the president of the board of directors of the Deseret Agricultural and Manufacturing Society, in importing into this Territory, within the next ensuing twelve months, improved breeds of sheep, which shall be sold, or disposed of, by the president and board of directors of said society in such a manner, so far as it may be practicable, as will not depreciate the sum appropriated, that it may remain in the hands of said society, as a fund, for the importation of improved breeds of sheep, until otherwise provided by law.

Report to be made to Legislative Assembly.

(433.) SEC. 3. It shall be the duty of the president and board of directors of said society to make an annual report, during the first week of its session, to the Legislative Assembly, of the kinds and number imported, the cost of their importation, the number sold, how much sold for; also the amount of money, and the number, kind, and approximate value of sheep on hand.

Resolution in relation to grants of lands.

[*Approved January* 13, 1865.]

Resolution accepting grant of land for benefit of agriculture, etc.

(434.) *Resolved by the Governor and Legislative Assembly of the Territory of Utah:* That whereas, by act of Congress, approved July 2, 1862, and an act amendatory of the same, approved April 14, 1864, grants of land were proffered the several States and Territories, for the benefit of agriculture and the mechanic arts and for the establishment of agricultural colleges in the several States and Territories, under certain conditions and restrictions.

Resolved, that, in behalf of the Territory of Utah, this Assembly accept the said grant of land proffered by acts referred to, and agree to the conditions therein contained.

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(1) Repealed by an act approved Jan. 30, 1872.

CHAPTER II.

SECTION.
435. Statistics what to contain and manner of making tables.
436. Discretionary powers.
SECTION.
437. Appropriation to defray expenses of bureau. Forms.

An Act establishing a bureau of statistics.

[*Approved February* 20, 1874.]

(435.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That there shall be established in connection with and under the direction of the Deseret Agricultural and Manufacturing Society, a Bureau of Statistics, which take cognizance of the material interests of the Territory of Utah, and may put itself in communication with county, city, precinct, and railroad officers, and other sources of information, to collect, arrange, and tabulate such data as will enable it to present to the Legislature during the first week of its session statistical tables pertaining to the following subjects, viz.:

How established.

Statistics, what to contain and manner of making tables.

First, Agriculture, as per form "A."
Second, Irrigation, as per form "B."
Third, Horticulture, as per form "C."
Fourth, Manufactures, as per form "D."
Fifth, Mines, as per form "E."
Sixth, Immigration, as per form "F."
Seventh, Exports, as per form "G."
Eighth, Imports, as per form "H."

(436.) SEC. 2. That said society shall have power to modify these tables as circumstances or experience may in their judgment require.

Discretionary powers.

SEC. 3. (1)

(437.) SEC. 4. That the sum of five hundred dollars for the year eighteen hundred and seventy-four, and five hundred dollars for the year eighteen hundred and seventy-five, be appropriated to carry into effect the provisions of this act, to be drawn by the President of the Deseret Agricultural and Manufacturing Society upon approved vouchers.

$1,000 appropriated to defray expenses of bureau.

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(1) Repeals sections 2 and 3 of an act approved Feb. 19, 1869.

FORM "A."

Forms.

Agricultural Statistics, Utah Territory.

WHEAT.

Number of acres planted.
Average yield per acre in bushels.
Loss sustained.

BARLEY.

Number of acres planted.
Average yield per acre in bushels.
Loss sustained.

OATS.

Number of acres planted.
Average yield per acre in bushels.
Loss sustained.

CORN.

Number of acres planted.
Average yield per acre in bushels.
Loss sustained.

SORGHUM.

Number of acres planted.
Average yield per acre in gallons.
Loss sustained.

POTATOES.

Number of acres planted.
Average yield per acre in bushels.
Loss sustained.

CARROTS.

Number of acres planted.
Average yield per acre in bushels.
Loss sustained.

BEETS.

Number of acres planted.
Average yield per acre in bushels.
Loss sustained.

COTTON.

Number of acres planted.
Average yield per acre in pounds.
Loss sustained.

MEADOW.

Number of acres planted.
Average yield per acre in tons.
Loss sustained.
Remarks.

FORM "B."

Irrigation Statistics, Utah Territory.

COUNTIES.

Number of acres irrigated.
Amount expended on canals from——to——.
Amount expended on dams from——to——.
Amount expended in cleaning out old ditches from ——to——.
Remarks.

FORM "C."

Horticulture Statistics, Utah Territory.

COUNTIES.

APPLES.

Number of acres planted.
Average yield per acre in bushels.
Loss sustained.

PEACHES.

Number of acres planted.
Average yield per acre in bushels.
Loss sustained.

GRAPES.

Number of acres planted.
Average yield per acre in pounds.
Loss sustained.

CURRANTS.

Number of acres planted.
Average yield per acre in bushels.
Loss sustained.
Remarks.

FORM "D."

Tables of Manufactures.

COUNTIES.

Location and character of establishment.
Material of its construction.
Date of commencement.
Value of buildings and grounds.
Value of machinery employed.
Working capital.
Capacity.
Cost of raw material.
Hands employed, male and female.
Value of products.
Remarks.

FORM "E."

Mining Statistics, Utah Territory.

COUNTIES.

Number of mills.
Number of stamps.
Number of arastras.

Number of beds.
Number of smelters.
Capital in mills and milling machinery.
Capital in other reduction works.
Number of recorded mines.
Tons of ore taken out.
Cost of taking out, per ton.
Tons of ore worked.
Cost per ton for working.
Average yield per ton—Gold, silver, lead, iron.
Total production—Gold, silver, lead, iron.
Remarks.

FORM "F."

Immigration Statistics, Utah Territory.

COUNTIES.

Increase in population within the year.
Immigration from within the Territory, ——males, ——females.
Immigration from without the Territory.
Immigration from the United States.

MALES.

Over forty years of age.
Between twenty and forty.
Under twenty.

FEMALES.

Over forty years of age.
Between fifteen and forty.
Under fifteen.

FROM ABROAD—MALES.

Over forty years of age.
Between twenty and forty.
Under twenty.

FEMALES.

Over forty years of age.
Between fifteen and forty.
Under fifteen.

NATIONALITY.

British subjects.
Danes.
Swedes.
Germans.
Other nationalities.

FORM "G."

Statistical table of exports from the Territory of Utah, Year 187...

COUNTIES.

EXPORTS EAST—FARM PRODUCTS—SMALL GRAIN.

Bushels of Wheat.
Bushels of Corn.
Bushels of Barley.
Bushels of Rye.
Bushels of Oats.

FRUIT.

Bushels of Apples.
Bushels of Pears.
Bushels of dried Peaches.
Bushels of dried Plums.
Bushels of Apricots.
Total value of fruits and small grain.

VEGETABLES.

Total value of shipments.

BUTTER.

Pounds shipped.
Value of shipment.

MINERAL PRODUCTS.

Value of mineral products shipped.

MANUFACTURED ARTICLES.

Value of manufactured articles shipped.
Value of shipments to points west of the Missouri.
Value of shipments to points east of the Missouri.

WEST—FARM PRODUCTS—SMALL GRAIN.

Bushels of Wheat.
Bushels of Corn.
Bushels of Barley.
Bushels of Rye.
Bushels of Oats.

FRUIT.

Bushels of Apples.
Bushels of Pears.
Bushels of dried Peaches.
Bushels of dried Plums.
Bushels of Apricots.
Value of fruits and small grain shipped west.

VEGETABLES.

Value of shipments.

BUTTER.

Pounds shipped.
Value of shipments.

MINERAL PRODUCTS.

Value of mineral products shipped.

MANUFACTURED ARTICLES.

Value of manufactured articles shipped.
Value of shipments to points east of the Sierra Nevadas.
Value of shipments to points beyond the Sierra Nevadas.
Remarks.

FORM "H."

Statistical table of imports, Utah Territory.

COUNTIES.

Value of manufacturing machinery, tools and supplies.
Value of mining machinery, tools and supplies.
Value of milling machinery, tools and supplies.
Value of general merchandise.
Value of provisions.
Value of wines, liquors and tobaccos.
Value of building materials.

TITLE XI.

OF CORPORATIONS OTHER THAN MUNICIPAL.

CHAPTER I. Of telegraph companies.
CHAPTER II. Of railroad companies.
CHAPTER III. Of irrigation companies.
CHAPTER IV. Of incorporations for general purposes.
CHAPTER V. Church incorporation.
CHAPTER VI. Incorporating Perpetual Emigration Fund.

CHAPTER I.

OF TELEGRAPH COMPANIES.

SECTION.
438. How and upon what conditions telegraph companies may be organized.
439. Certificate of organization what to specify; where to be filed.
440. Company to be incorporated; copy certificate to be evidence.
441. Powers of company.
442. Where authorized to construct lines of telegraph.
443. Commissioners to assess damages; oath of; compensation.
444. May lease, sell and convey their franchise and property.
445. Limitation of foregoing sections.
446. Operators and persons in employ of telegraph companies exempt from military and jury duty.
447. Contracts made by telegraph deemed contracts in writing.
448. Notice may be given by telegraph. Proviso: such notice deemed actual notice.
449. Contents of instruments in writing may be sent by telegraph; force and effect of.
450. Checks, etc., may be made or drawn by telegraph; force and effect of; when genuineness of denied on oath party claiming under it to prove original; original message to be preserved.
451. Contents of instruments sent by telegraph may be *prima facie* evidence; burden of proof.
452. Contents of warrants of arrest may be sent by telegraph; authority of officers to make arrests on receipt of telegraph copy; original warrant and order to be preserved.
453. Writ or order in civil cases may be transmitted by telegraph; original or certified copy may be used by operator.
454. When document bears a seal.
455. Company may have a distinguishing mark in their business.
456. Messages must be sent in order received; proviso, as to public business.
457. "Telegraph copy" and "telegraphic duplicate" defined.
458. Conferring certain rights upon "California State Telegraph Company."

An Act to provide for the organization of telegraphic companies.

[*Approved January* 14, 1864.]

How and upon what conditions telegraph companies may be organized.

(438.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That any number of persons, not less than three, two-thirds of whom must be residents of this Territory, may associate and form a company for the purpose of constructing, owning, holding and working a line or lines of telegraph in this Territory, upon the terms and conditions and subject to the liabilities prescribed in this act.

Certificate of organization; what to specify

(439.) SEC. 2. Such persons under their hands shall make a certificate which shall specify:

1st.—The corporate name of the company.

2d.—The general route of the principal line or lines of telegraph, designating the principal points to be connected thereby.

3d.—The amount of the capital stock of the company and the number of shares into which the same shall be divided.

4th.—The names and places of residence of the principal shareholders, and the number of shares subscribed for by each.

5th.—The period of the existence of said company, not to exceed fifty years. Which certificate shall be proved or acknowledged, and filed in the office of the county clerk of the county in which one of the principal offices of said company shall be established, and a copy or duplicate thereof filed in the office of the secretary of State.

Where to be filed.

Company to be incorporated.

(440.) SEC. 3. Upon complying with the provisions of the preceding section, such company shall become a body corporate by the name designated in said certificate, and shall be entitled to all the rights and privileges, and subject to the liabilities common to corporations; and a copy of said certificate, certified by the clerk where the same is filed, or by the secretary of State, may be used as evidence in all courts and places.

Copy certificate to be evidence.

Powers of company.

(441.) SEC. 4. Such company shall have power to purchase, take, receive, hold, use and vend to others to be used any patent or patents for telegraphing, and any and all rights thereunder; to purchase, take, receive, hold and maintain any and all rights, privileges and franchises relating to the business of telegraphing; to make, receive by assignment, or ratify by contract or agreement for the building, maintaining, controlling or working of any line or lines of telegraph; to construct, purchase, lease, take, receive, hold, control and work any lines for telegraphing within the Territory of Utah; and to purchase, take, lease, hold, own, use and occupy any personal or real estate, rights, property, telegraph lines, grants, franchises and privileges that may be proper or convenient for the complete transaction of its business, or for effectually and conveniently carrying out the objects and purposes of said company. It shall also have power to appoint such directors, officers and agents, and to make such rules, regulations and by-laws as may be necessary or proper in the transaction of its business, and not inconsistent with the laws of this Territory or of the United States.

Where authorized to construct lines of telegraph.

(442.) SEC. 5. Such company is authorized to construct lines of telegraph along and upon any road or highway, or across any of the waters or over any lands within the limits of this Territory, by the erection of the necessary fixtures, including posts, piers, or abutments, and the appropriation of any standing trees, except fruit and ornamental trees and trees within enclosures, for sustaining the wires of said lines: *Provided*, the same shall not be so constructed as to incommode the public use of said road or highway or injuriously interrupt the navigation of said waters.

Commissioners to assess damages; oath of; compensation.

(443.) SEC. 6. If any person over whose lands said lines shall pass, upon which posts, piers, or abutments shall be placed, or standing trees appropriated, shall consider himself aggrieved or damaged thereby, it shall be the duty of the probate court of the county within which such lands are, on the application of such person and on notice of such application being served on the president or any director of such company, to appoint three discreet and disinterested persons as commissioners, who shall severally take an oath before any person authorized to administer oaths, faithfully and impartially to perform the duties required of them by this act, and it shall be the duty of said commissioners or a majority of them to make a just and equitable appraisal of all the loss or damage sustained by said applicant by reason of said lines, posts, piers, or abutments, or appropriation of standing trees, duplicates of which said appraisement shall be reduced to writing and signed by said commissioners or a majority of them; one copy shall be delivered to the applicant and the other to the president or any director or officer of said company or corporation, on demand; and in case any damage shall be adjudged to said applicant, the company or corporation shall pay the amount thereof, with the costs of said appraisal, said costs to be set forth and liquidated with the damages appraised; and said commissioners shall receive for their services such compensation as the probate judge may award, to be paid in like manner as the costs and damages appraised. But in no case shall the person feeling himself aggrieved or injured be entitled to any damage, when application is not made to the probate court within six months after the erection of said telegraph lines across the lands of such persons.

May lease or sell and convey their franchise and property.

(444.) SEC. 7. Any telegraph company may at any time, with the consent of the persons holding two-thirds of the issued stock of said company, sell, lease, assign, transfer and convey any rights, privileges, franchises and property of said company.

Limitation on former sections.

(445.) SEC. 8. This act shall not be construed to limit or impair any rights of the California State Telegraph Company.

An Act for the regulation of the telegraph, and to secure secrecy and fidelity in the transmission of telegraphic messages.

[*Approved January* 16, 1863.]

SECS. 1, (1) 2, (2) 3, (3) 4, (4) 5, (5) 6, (6) 7, (7) 8, (8) 9. (9)

Operators and persons in employ of telegraph companies exempt from military and jury duty.

(446.) SEC. 10. All operators, clerks and persons in the employ of any telegraph company, whilst employed in the offices of said company or along the route of its telegraph lines, shall be exempt from militia duty and from serving on juries.

Contracts made by telegraph to be deemed contract in writing.

(447.) SEC. 11. Contracts made by telegraph shall be deemed to be contracts in writing; and all communications sent by telegraph and signed by the person or persons sending the same, or by his or their authority, shall be held and deemed to be communications in writing.

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(1) See sec. (2185.) of an act to establish a penal code.
(2) See sec. (2097.) same act.
(3) See sec. (2204.) same act.
(4) See sec. (2203.) same act.
(5) See sec. (2187.) same act.
(6) See sec. (2205.) same act.
(7) See sec. (2206.) same act.
(8) See sec. (2207.) same act.
(9) Repealed by act to establish penal code.

Notice may be given by telegraph: proviso, such notice deemed actual notice.

(448.) Sec. 12. Whenever any notice, information or intelligence, written or otherwise, is required to be given, the same may be given by telegraph: *Provided*, that the dispatch containing the same be delivered to the person entitled thereto, or to his agent or attorney. Notice by telegraph shall be deemed actual notice.

Contents of instruments in writing may be sent by telegraph; force and effect of.

(449.) Sec. 13. Any power of attorney or other instrument in writing duly proved, or acknowledged and certified so as to be entitled to record, may, together with the certificate of its proof or acknowledgment, be sent by telegraph; and the telegraphic copy or duplicate thereof shall, *prima facie*, have the same force and effect, in all respects, and may be admitted to record and recorded in the same manner and with like effect as the original.

Checks, etc., may be made or drawn by telegraph; force and effect of.

(450.) Sec. 14. Checks, due bills, promissory notes, bills of exchange and all orders or agreements for the payment or delivery of money or other thing of value, may be made or drawn by telegraph; and when so made or drawn shall have the same force and effect to charge the maker, drawer, indorser or acceptor thereof, and shall create the same rights and equities in favor of the payee, drawer, indorsee, acceptor, holder or bearer thereof, and shall be entitled to the same days of grace, as if duly made or drawn and delivered in writing; but it shall not be lawful for any person, other than the maker or drawer thereof, to cause any such instrument to be sent by telegraph so as to charge any person thereby, except as hereinafter in the next section otherwise provided. Whenever the genuineness or execution of any such instrument received by telegraph shall be denied on oath by or on behalf of the person sought to be charged thereby, it shall be incumbent upon the party claiming under or alleging the same to prove the existence an execution of the original writing from which the telegraphic copy or duplicate was transmitted. The original message shall in all cases be preserved in the telegraph office from which the same is sent.

When genuineness of denied on oath party claiming under it to prove original.

Original message to be preserved.

Contents of certain instruments sent by telegraph may be prima facie evidence; burden of proof.

(451.) Sec. 15. Except as hereinbefore otherwise provided, any instrument in writing, duly certified under his hand and official seal by a notary public, commissioner of deeds or a clerk of a court of record, to be genuine within the personal knowledge of such officer, may, together with such certificate, be sent by telegraph; and the telegraphic copy thereof shall, *prima facie* only, have the same force, effect and validity, in all respects whatsoever, as the original; and the burden of proof shall rest with the party denying the genuineness or due execution of the original.

Contents of warrant of arrest may be sent by telegraph.

(452.) SEC. 16. Whenever any person or persons shall have been indicted or accused on oath of any public offense, or thereof convicted, and a warrant of arrest shall have been issued, the magistrate issuing such warrant, or any judge of the supreme court, or of any district, county, or probate court may endorse thereon an order signed by him and authorizing the service thereof by telegraph, and thereupon such warrant and order may be sent by telegraph to any marshal, sheriff, constable or policeman; and on the receipt of the telegraphic copy thereof by any such officer, he shall have the same authority and be under the same obligation to arrest, take into custody and detain the said person or persons, as if the said original warrant of arrest with the proper direction for the service duly endorsed thereon had been placed in his hands; and the said telegraphic copy shall be entitled to full faith and credit and have the same force and effect in all courts and places as the original. But prior to indictment or conviction, no such order shall be made by any officer unless in his judgment there is probable cause to believe the said accused person or persons guilty of the offense charged: *Provided*, the making of such order by any officer, as aforesaid, shall be *prima facie* evidence of the regularity thereof, and of all proceedings prior thereto. The original warrant and order, or a copy thereof certified by the officer making the order, shall be preserved in the telegraph office from which the same is sent; and in telegraphing the same the original or the said certified copy may be used.

Authority of officers to make arrests on receipt of telegraph copy.

Original warrant and order to be preserved.

Writ or order in civil cases may be transmitted by telegraph.

(453.) SEC. 17. Any writ or order in any civil suit or proceeding and all other papers requiring service may be transmitted by telegraph for service in any place, and the telegraphic copy of such writ or order or paper so transmitted may be served or executed by the officer or person to whom it is sent for that purpose and returned by him, if any return be requisite, in the same manner and with the same force and effect in all respects as the original thereof might be if delivered to him; and the officer or person serving or executing the same shall have the same authority and be subject to the same liabilities as if the said copy were the original. The original, when a writ or order shall also be filed in the court from which it was issued, and a certified copy thereof shall be preserved in the telegraph office from which it was sent. In sending it, either the original or the certified copy may be used by the operator for that purpose.

Original or certifed copy may be used by operator.

(454.) SEC. 18. Whenever any document to be sent by telegraph bears a seal, either private or official, it shall not be necessary for the operator, in sending the same, to telegraph a description of the seal, or any words or device thereon, but the same may be expressed in the telegraphic copy by the letters "L. S.," or by the word "Seal."

When document bears a seal.

(455.) SEC. 19. The president or secretary of any telegraph company doing business in this Territory may file in the office of the county clerk of the county in which the principal office of said company within this Territory is situated, a copy of any printed blank or envelope, picture or device, used or intended so to be, by said company, with his certificate that the same is commonly used, or is intended so to be, in the business of said company as a distinguishing mark, notice or index of said business, and thereupon such blank, envelope, picture or device shall become the property of said company; and it shall not be lawful for any person, unless by the employment or permission of said company, to print, publish, distribute or use, or cause to be printed, published, distributed or used, either of them, or any copy, counterfeit, similitude or imitation thereof. Any person willfully offending against the provisions of this section may be punished by fine not to exceed five hundred dollars, or imprisonment not to exceed six months.

Company may have a distinguishing mark in their business.

(456.) SEC. 20. It shall be the duty of any telegraph company doing business in this Territory to transmit all dispatches in the order in which they are received, under the penalty of one hundred dollars, to be recovered with costs of suit by the person or persons whose dispatch is postponed out of its order: *Provided*, that communications to and from public officers on official business may have precedence over all other communications: *And, Provided* also, that intelligence of general and public interest may be transmitted for publication out of its order.

Messages must be sent in the order in which they are received.

Proviso as to public business.

(457.) SEC. 21. The term "telegraphic copy" or "telegraphic duplicate," wherever used in this act, shall be construed to mean any copy of a message made or prepared for delivery at the office to which said message may have been sent by telegraph.

"Telegraphic copy" and "telegraphic duplicate" defined.

(458.) SEC. 22. The California State Telegraph Company, a company formed within the State of California, and

Confirm certain rights upon California State Telegraph Company.

having its principal office in the city of San Francisco and doing business within the Territory of Utah, is hereby declared to be duly incorporated under its present corporate name, style and organization; and the right is hereby granted to said company to acquire, own and enjoy, and to dispose of any and all property real and personal, franchises and privileges as may be proper or convenient for the transaction of its business and for effectually carrying out the objects and purposes of said company, as fully and completely as if said company had been originally formed and duly incorporated under the laws of this Territory, hereby conferring upon said company as ample power to do and transact business and maintain its rights in all courts and places as is or may be possessed by domestic corporations or natural persons.

CHAPTER II.

OF RAILROAD COMPANIES.

SECTION.

459. How company to be formed.
460. Amount of capital stock necessary to be subscribed.
461. What articles of association to contain.
462. Subscribers to stock to subscribe name, residence and number of shares. Proviso.
463. Where articles of association to be filed; corporate powers of association; certified copy of articles to be evidence of incorporation.
464. Directors to meet and organize board; president and vice president to be elected from their number, and secretary and treasurer from stockholders; term of office.
465. Books of subscription to be opened; notice to be given; when more stock shall be subscribed than whole capital how to proceed.
466. Meeting to choose directors; where held and notice to be given; number of directors how chosen; term of office.

SECTION.

467. Special meetings of stockholders; notice to be given and what to contain; what business may be transacted; proceedings when majority do not attend; articles of association may be amended so as to alter route, etc.
468. Certain officers may be removed by stockholders.
469. Proceedings in case directors not elected on day designated by law.
470. Powers of the board of directors.
471. Directors to cause records to be kept; duty of secretary.
472. Secretary to keep record of the meetings of the company and the board of directors; shall keep other necessary books; shall keep transfer book, what to be entered therein.
473. Stock to be personal estate and transferable; shares not transferable until previous calls and assessments are paid.

SECTION.
474. Directors may require payment of stock at such times and as they deem proper; notice to be given; how payment enforced.
475. By whom certificates of stock to be signed.
476. Certificate to be made when stock all paid in; where filed.
477. Powers and liabilities of corporation.
478. To transfer persons and property; to erect depots and fixtures; to regulate transportation and compensation therefor.
479. How to acquire rights when unable to agree for purchase,
480. Petition to the probate or district court therefor; form and requisites of petition.
481. Who defendants in the proceedings.
482. Court to appoint time for hearing the petition; upon whom company to serve notice; how service to be made if party unknown or resides out of the Territory.
483. Defendants to said petition may show cause; court may appoint three commissioners.
484. Court to appoint time and place of first meeting of commissioners.
485. Commissioners to take official oath; their powers and duties.
486. To view premises and hear proofs; to make report.
487. Parties dissatisfied may move court to set aside report; report may be set aside and recommitted to same, or other commissioners.
488. Report to be confirmed after twenty days.

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489. When property to vest in corporation; to be deemed taken for public use.
490. When and where company to pay or tender compensation.
491. Court to direct as to the payment of money.
492. "Person" includes municipal or other incorporations.
493. Corporation to maintain fences.
494. Bell to be placed on locomotive; when to be sounded. Proviso, sounding whistle equivalent to ringing bell.
495. Cars to be run at regular times to be fixed by notice; corporation to furnish accommodations for passengers and property.
496. Baggage, lumber and freight cars not to be placed in rear of passenger cars.
497. Company not liable if person injured was violating regulations of the company.
498. Passengers refusing to pay may be put out of the cars.
499. Conductors, etc., to wear badges; shall have no authority without such badge.
500. Check to be affixed to baggage; duplicate to be given to person owning baggage.
501. Map of land taken and obtained to be filed with auditor and recorders.
502. When acts of incorporation to become void by non-user.
503. What damages corporation liable for.
504. Consolidation of two or more railroad companies provided for.

An Act providing for the incorporation of railroad companies and the management of the affairs thereof.

[*Approved February* 12, 1869.]

How company to be formed.

(459.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That any number of persons, not less than ten, two-thirds of whom shall be residents of this Territory, being subscribers to the stock of any contemplated railroad company, may be formed into a corporation for the purpose of constructing, owning and maintaining such railroad, by complying with the following requirements:

Amount of capital stock necessary to be subscribed.

(460.) SEC. 2. That whenever stock to the amount of at least one thousand dollars for each and every mile of the proposed railroad shall have been subscribed, and ten per cent. in cash paid thereon, to a treasurer appointed by said subscribers from among their number, then the said subscribers, either in person or by proxy, after having received at least five days' notice from said treasurer of a meeting for that purpose may meet and adopt articles of association, and may elect from among their number, not less than five nor more than thirteen directors.

What the articles of association to contain.

(461.) SEC. 3. The said articles of association shall set forth the name of the incorporation, the number of years the same is to continue in existence, not exceeding fifty; the amount of the capital stock of the company, which shall be divided into shares of not more than one hundred dollars each; the actual contemplated cost of constructing the road, together with the cost of right of way, mode of power, and every other appurtenance and thing for the completion and running of said road, as nearly as can be estimated by competent engineers; the names and number of the directors to manage the affairs of the company, who shall hold their office until others are elected, as shall be provided by the by-laws of the company; the place from and to which the proposed road is to be constructed, and the counties into and through which it is intended to pass, and its length as near as may be.

Subscribers to stock to subscribe name, residence, and number of shares; proviso.

(462.) SEC. 4. Each stockholder shall personally subscribe to such articles of association, his name, place of residence, and the number of shares of stock taken by him in such company: *Provided*, that in case a person having duly paid the ten per cent. required upon his subscription, may sign the same by written proxy, or power of attorney to that effect; and there shall be endorsed or attached to the said articles so subscribed, an affidavit, made by any three of the directors named therein, setting forth in substance, that said amount of stock has been subscribed, and that ten per cent. in cash thereon has been paid in, as aforesaid; and that the subscribers to said articles are personally known to them.

When articles of association to be filed.

(463.) SEC. 5. Articles of association formed in pursuance of the provisions of the foregoing sections, shall be filed in the office of the auditor of public accounts of this Territory; and thereupon the persons who have subscribed the same, and all persons who may from time to time become stockholders in such company shall be a body politic and corporate, by the name stated in such articles of association; and shall be capable in law to make contracts, acquire real and personal property; to purchase, hold and convey any real and personal property whatever, necessary

Corporate powers of association.

for the construction, completion and maintenance of such railroad; and for the erection of all necessary buildings and yards, or places and appurtenances for the use of the same; and be capable of suing and being sued, and may have a common or corporate seal, and make and alter the same at pleasure, and generally to possess all the powers and privileges for the purpose of carrying on the business of the corporation, that private individuals and natural persons now enjoy. A copy of any articles of association filed in pursuance of this act and certified to be a copy by the auditor of public accounts, shall, in all courts and places, be evidence of the incorporation of such company, and of the facts stated therein.

Certified copy of articles to be evidence of incorporation.

Directors to meet and organize board; president and vice president to be elected from their number, and secretary and treasurer from stockholders; term of office.

(464.) SEC. 6. The directors named in said articles of association, shall meet and organize as a board within twenty days after having received notice of their election, given by the treasurer named and designated in the second section of this act; and at the first meeting of the board, after each election of directors, they shall elect from among their number, a president and vice president, and from the stockholders a secretary and treasurer, who may hold office during the pleasure of the board, or until their successors have been elected and qualified; the secretary and treasurer, before entering upon their duties, shall each give a bond with such security as may be prescribed by the board of directors, which shall be filed with the auditor of public accounts; the temporary treasurer, required by the second section of this act, shall pay over all moneys received by him as such treasurer, to the treasurer elected by the board of directors, as soon as the latter has been qualified.

Books of subscription to be opened.

(465.) SEC. 7. The board of directors, when deemed necessary, shall open books of subscription to the capital stock of the company, and authorize such persons to superintend the taking of said subscription at such times and places and upon such terms as they may direct, due notice of which shall be given; but no subscription of stock shall be binding on the company or parties so subscribing, until the same shall have been accepted and approved by a resolution of the board; in case a greater amount of acceptable stock shall be subscribed than the whole capital required by such company, the board of directors shall distribute the same as equally as possible among the subscribers; but no shares thereof shall be divided in making said distribution.

Notice to be given when more stock shall be subscribed than whole capital; how to proceed.

Meeting to choose directors; where held; notice to be given.

(466.) SEC. 8. There shall be, after the first election of directors as prescribed in the foregoing, annual meetings of the stockholders, held in one of the counties in which, or through which, such road is proposed to be or may have been constructed, for the election of directors to serve for the ensuing year, notice of which, appointing a time and place, shall be given as prescribed by the by-laws of the company, or by resolution of the board of directors, which notice shall be published not less than twenty days previous thereto, in some newspaper having a general circulation in the Territory; directors shall be elected from time to time, as the by-laws shall designate, or as may be determined in the formation of articles of association, and shall be chosen by ballot and by a majority vote of the stockholders, being present in person or by written proxy, and every such stockholder shall be entitled to one vote for every share of stock which he may have owned for ten days next preceding such election; the directors may hold office for one year and until their successors are elected and qualified.

Number of directors and how chosen; term of office.

Special meeting of stockholders. Notice to be given and what to contain.

(467.) SEC. 9. Meetings of stockholders may be called at any time during the interval between the annual meetings by the directors, or by any number of stockholders owning not less than one-third of the stock, by giving thirty days' public notice of the time and place of meeting, in the manner prescribed in the next preceding section for annual meetings; when any such meeting is called by the stockholders, the object of the meeting shall be stated in such notice, and no other business shall be transacted at said meeting except such as shall be so stated in the notice; if at any such meeting thus called a majority in value of the stockholders are not represented in person or by written proxy, said meeting shall be adjourned from day to day, not exceeding three days, without transacting any business; and if within said three days stockholders having at least a majority in interest of the stock, do not attend and participate in such meeting, then the meeting shall be dissolved. At any meeting held in pursuance of the provisions of this section, which shall have been called by the stockholders and at which not less than three-fourths of the capital stock of the company is represented in person or by written proxy, the stockholders present may by unanimous vote so amend the articles of association of the company, as to alter the route or change the termini of its railroad; or may increase the amount of the capital stock, or increase or reduce the num-

What business to be transacted.

Proceedings when majority do not attend.

Articles of association may be amended so as to alter route, etc.

ber of directors of such company, to any number not less than five, nor more than thirteen, such amendment shall be signed by the president, and the secretary shall certify thereon, under his hand and the corporate seal of the company, the fact of their adoption, and also the time, place, and by whom they were adopted; and thereupon, they shall be filed with the auditor of public accounts, who shall attach them to the original articles on file in his office, the said amendments shall from time of being so filed constitute a part of the articles of association of the company and thereafter, so much of the original articles as conflict with such amendments shall be null and void.

Certain officers may be removed by stockho ders.

(468.) SEC. 10. At all general meetings of the stockholders, when two-thirds of the capital stock interest is present either in person or by written proxy, they may remove any president, vice president or director of such company and elect others in their stead: *Provided*, notice of such intended removal shall have been given as required in the preceding sections.

Proceedings in case directors not elected cn day designated by the by-laws.

(469.) SEC. 11. In case it shall happen at any time, that an election of directors shall not be made on the day designated by the by-laws of the company, said company, for that reason, shall not be dissolved, if within ninety days thereafter they shall hold an election for directors in such manner as shall be provided by the by-laws; the directors may appoint all subordinate officers not provided in this act, who need not necessarily be stockholders; the said officers may be chosen at such times, and for such terms as the directors may prescribe, who may also fix the compensation of each, and require them to give security for the faithful discharge of their respective duties as may be established by the by-laws of the company; any such officers may be removed at the pleasure of the board of directors and their places filled for the remainder of the term, and the said directors shall have power to fill all vacancies in the board, of all officers of the company occasioned by death, resignation, or otherwise.

Power of the board of directors.

(470.) SEC. 12. The directors of any railroad company organized under this act shall, for and in behalf of such company, make and execute all contracts of whatever nature or kind; and may fully and completely carry out the objects and purposes of such corporation, in such way and manner as they may think proper, and exercise generally the corporate powers of such company; and such directors shall also have full power to make such by-laws as they may think proper for the transfer of stock, and management of the property and business of the company, and for prescribing the duties of officers, artificers and employes, and for the appointment of all officers, and all else that by them may be deemed needful and proper, within the scope and power of said company: *Provided*, that such by-laws be not disapproved by the stockholders, and be not inconsistent or in conflict with the laws of this Territory, or of the United States.

Directors to cause records to be kept; duty of secretary.

(471.) SEC. 13. The directors shall cause a book to be kept, called record of corporation debts, in which the secretary shall record all written contracts of the directors; and a succinct statement of the debts of the company, the amount thereof, and to whom due; which book shall, during all office hours, be open to the inspection of any stockholder or party interested.

Secretary to keep record of the meetings of the company and the board of directors.

(472.) SEC. 14. The secretary shall keep in a book provided for that purpose, a correct copy of the proceedings at each meeting of the company, as well as of the board of directors; such record showing the name of each director present at each meeting of the board, and the name of each director voting against any proposition, whenever said director may require the same placed on record. Prior to the adjournment of each meeting of the company or board of directors, the record of such meeting shall be read, and approved.

Shall keep other necessary books.

The secretary shall also keep such other books as may be deemed necessary, or prescribed by the directors, in which all the business transactions of the company shall be plainly and accurately kept, one of which shall be labeled book of stockholders, containing the names of all persons, alphabetically arranged, who are, or shall have been stockholders in said company, showing their places of residence if known, the number of shares of stock held by them respectively, the time when they became owners of such shares, and amount of cash paid to the company by them respectively, as also the time when they may have ceased to be stockholders; which book, during the office hours of said secretary, shall be open for the inspection of stockholders and creditors of the company, or their personal representatives.

Shall keep transfer book; what to be entered therein.

The secretary shall also keep a transfer book, in which all transfers of stock shall be duly entered, and no transfer of stock of such company shall be valid, until it shall have been entered therein; by an entry showing to and by whom transferred; the numbers and designation of the shares, the date of transfer, and duly attested by said secretary and approved by the directors.

Stock to be personal estate and transferable.

(473.) SEC. 15. The stock of such company shall be deemed personal estate, shall be transferred in the manner provided in the preceding section, and upon the books of the company, upon proper assignment and delivery, to the assignee, of the certificates of stock; but no share shall be transferable till all the previous calls or assessments thereon have been fully paid in; any shareholder transferring his stock in the manner aforesaid, and the same being approved by the boards of directors, shall, from and after the date of such approval, cease to be a stockholder in such company, and shall not be liable to any future calls from the directors nor for any debts of the company thereafter.

Shares not transferable until previous calls and assessments are paid.

Directors may require payment of stock at such times as they deem proper; notice to be given.

(474.) SEC. 16. The directors of such company may call in and demand from stockholders the sums by them subscribed, in equal installments of not more than ten per cent. per month, unless otherwise stipulated in the articles of subscription, at such times as they may deem proper; notice of which shall be given to the stockholders personally, or shall be published once a week, for at least four weeks, in a newspaper having a general circulation in this Territory; if, after such notice has been given, any stockholder shall fail in the payment of the assessment made upon shares held by him, so many of such shares as may be necessary for the payment of the assessment on all the shares held by him, may be sold at public auction, to the highest bidder.

How payment enforced.

By whom certificates of stock to be signed.

(475.) SEC. 17. Certificates of stock shall be issued signed by the president and secretary in such manner and upon such terms as the by-laws of the company may prescribe.

Certificate to be made when stock all paid in: where filed.

(476.) SEC. 18. The president, secretary, and at least a majority of the directors, within thirty days after the payment of the last installment of the capital stock, so fixed and limited by the company, shall make a certificate, stating the amount of capital, so fixed and paid in, which certificate shall be sworn to, and subscribed by them, and filed in the office of the auditor of public accounts.

Powers and liabilities of corporation.

(477.) SEC. 19. Every company incorporated under this act, or constructing or operating railways in this Territory, shall have power to cause such surveys for the proposed railroad to be made, as may be necessary for the selection of the most advantageous route, and for such purposes their officers, agents and employes may enter upon the lands or waters of any person; subject to responsibility for all damages that may accrue; and may receive, hold, take and convey, by deed or otherwise, such voluntary grants and donations of real estate and other property of every description, as may be made to it, to aid and encourage the construction, maintenance and accommodation of such railroad; to purchase, and by voluntary grants and donations, receive and take, and by its officers, engineers, surveyors and agents, enter upon and take possession of and hold and use in any manner they may deem proper, all such real estate and personal property as the directors may deem necessary for the construction and maintenance of such railroad stations, depots and other accommodations; and may lay out its road or roads, not exceeding nine rods wide, and construct and maintain the same, with a single or double track, with such appendages as may be deemed necessary for the convenient use of the same; and for the purposes of making embankments, excavations, ditches, drains, culverts, or for procuring timber, stone and gravel, or other materials, may take as much more land wherever they think proper, as may be necessary for the purposes aforesaid, in the manner hereinafter provided; and may construct their road along, across or upon any stream of water, water course, lake, roadstead, street, avenue, highway, or across any railway, canal, ditch or flume, which the route of its road shall intersect, in such manner as to afford security for life and property, but said company shall restore the stream, or water course, road, street, avenue, highway, railroad, canal, ditch or flume, thus intersected, to its former state, as near as may be, or in a sufficient manner not to have necessarily impaired its usefulness, or injured its franchises; and may cross, intersect, join and unite its railroad with any other railroad either before or after construction, at any point upon its route, and upon the grounds of such other railroad company with the necessary turnouts, sidings and switches, and other conveniences in furtherance of the objects of its connections; and every company whose railroad is, or shall be hereafter intersected by any new railroad, shall unite with the owners thereof in forming such intersections and connections, and grant the facilities aforesaid; and if the two companies cannot agree upon the amount of compensation to be made therefor, or the points or manner of such crossings, intersections and connections, the same shall be ascertained and determined by commissioners as hereinafter provided.

(478.) SEC. 20. The said company shall have power to take, transport, carry and convey persons and property on their railroad by the force and power of steam or of animals, or of any mechanical power, or by any combination of of them, and may receive tolls or compensation therefor; to erect and maintain all necessary and convenient buildings, stations, depots, fixtures and machinery for the accommodation and use of passengers, freight and business, and obtain and hold the lands and other property necessary therefor; to regulate the time and manner in which passengers and property shall be transported, and the tolls and compensation to be paid therefor, within the limits that may be prescribed by law; to regulate the force and speed of their locomotives, cars or other machinery used and employed on their road, and to establish, execute and enforce all needful rules and regulations usual and proper for railroad companies.

To transport persons and property: to erect depots and fixtures.

To regulate transportation and compensation therefor.

(479.) SEC. 21. If any such company cannot contract for the purchase of any real estate, or any right, title or interest therein, necessary for any of the purposes aforesaid, from the person or persons owning the same, then such company may acquire a title to the same for the purposes herein expressed, by means of the special proceedings prescribed in this act.

How to acquire rights when unable to agree for purchase.

(480.) SEC. 22. Said special proceedings shall be conducted substantially as follows: The said company shall file in the clerk's office of the probate, or district court of the county or district in which said real estate is situated, a petition verified according to law, stating therein the name of the company, the time when it was incorporated, that it still continues in legal existence, the principal termini of the proposed railroad, the description by metes and bounds, or by some accurate designation of the tract or tracts of land which said company desire to appropriate for the purposes mentioned in this act; that said tract or tracts of land are necessary for said purposes, that the line of said railroad has been surveyed and a map thereof made (a copy of which shall be filed with said petition), that said line has been adopted as the route for said railroad, together with the names of the persons in possession of said tract or tracts of land, and of those claiming any right, title or interest therein, as far as the same can be ascertained by reasonable diligence.

Petition to the probate or district court therefor.

Form and requisites of petition.

Who defendants in the proceedings

(481.) SEC. 23. The persons in occupation of said tract or tracts of land, and those having any right, title or interest therein, whether named in the petition or not, shall be defendants thereto, and may appear and show cause against the same, and may appear and be heard before the commissioners herein provided for, and in proceedings subsequent thereto, in the same manner as if they had appeared and answered said petition.

Court to appoint time for hearing the petition: upon whom company to serve notice.

How service to be made if party unknown or resides out of the Territory.

(482.) SEC. 24. The said court shall, by order, appoint a time for the hearing of said petition; and the said company shall cause all the occupants and owners of said tract or tracts of land, as far as the same can be ascertained by reasonable diligence, to be personally notified of the pending of said petition, at least ten days before the hearing thereof; and if any of said owners are unknown, or do not reside in this Territory, the company shall cause a notice, stating the filing of said petition, the object thereof, the tract or tracts of land sought to be appropriated, and the time and place of the hearing of said petition, to be published for four successive weeks previous to the time of hearing, in a newspaper having a general circulation in this Territory.

Defendants to said petition may show cause.

Court may appoint three commissioners

(483.) SEC. 25. The defendants to said petition may appear and show cause against the same, on or before the time set for the hearing thereof, or such other time as the hearing may be continued to; and upon satisfactory proof being made that the defendants have been duly notified of the pending of said petition as herein prescribed, the said court, if it shall be satisfied that the lands or any part thereof are necessary for any of the purposes mentioned in said petition, shall appoint three competent and disinterested persons as commissioners, to ascertain and assess the compensation to be paid to the person or persons having or holding any right, title or interest in, or to each of said tracts of land, for and in consideration of the appropriations of such lands to the use of said company.

Court to appoint time and place of first meeting of commissioners

(484.) SEC. 26. The said court shall appoint the time and place for the first meeting of said commissioners and the time for filing of their reports, and may give such further time as may be necessary for that purpose, if they shall not then have completed their duties.

Commissioners to take official oath.

(485.) SEC. 27. The said commissioners shall meet at the time and place ordered, and before entering upon their duties shall be duly sworn by any person authorized to administer oaths, to honestly, faithfully and impartially perform the duties imposed upon them; said commissioners may issue *subpœnas* for witnesses for either party; may administer oaths and may adjourn from place to place, and from time to time, as may be necessary for the proper discharge of their duties.

Their powers and duties.

(486.) SEC. 28. The said commissioners shall proceed to view the several tracts of land as ordered by said court, and shall hear the allegations and proofs of said parties, and shall ascertain and assess the compensation for such land, to be paid by the said company to the person or persons having, or holding any right, title or interest in, or to the same; and in ascertaining and assessing such compensation they shall take into consideration and make allowance for any benefit or advantage that in their opinion will accrue to such person or persons, by reason of the construction of the railroad as proposed by said company; and they shall, on or before the time as ordered by said court, file in the said clerk's office, their report, signed by them, setting forth their proceedings in the premises.

To view premises and hear proofs.

To make report.

(487.) SEC. 29. The said company, or any of the said defendants being dissatisfied with the decision of the commissioners may, within twenty days after the filing of said report, and after ten days' notice to the parties interested, move the court to set aside the report, and to order a new trial, as to any of the tracts of land; and upon good cause shown therefor, the said court may set aside the report as to such tract of land, and may recommit the matter to the same, or to other commissioners, who shall be ordered to proceed in like manner as those first appointed, but such matter shall not be more than twice committed to commissioners.

Parties dissatisfied may move court to set aside report; report may be set aside and recommitted to same or other commissioners

(488.) SEC. 30. Upon the expiration of twenty days after the filing of said report, or at such further time as may be appointed therefor, if the report has not been set aside as provided in the preceding section, and if the proceedings of said commissioners appear to have been correctly done, the said court shall confirm said reports and certify the same thereon.

Report to be confirmed after twenty days.

(489.) SEC. 31. Upon the compensation therein named being paid up, said company shall cause the said reports and certificates thereon, to be recorded in the recorder's office of said county, and the real estate, or the right, title or interest therein described in such report, shall be and be-

When property to vest in corporation.

To be deemed taken for public use.

come the property of said company for the purposes of its corporation, and shall be deemed acquired for, and appropriated to public use.

When and where company to pay or tender compensation.

(490.) SEC. 32. Such company shall, within thirty days after final confirmation of the report aforesaid, pay or tender the sum of money assessed by said commissioners for the compensation of each tract of land described in said report, and said payment or tender, may be made to the person or persons interested therein, according to the amount or extent of the right, title or interest owned or held by them; or the payment may be made to the said clerk of the court in which such proceeding was had for said persons, and the same shall be deemed valid for all purposes whatsoever, as if the said sum of money had been personally paid to each and all the persons entitled thereto.

Court to direct as to the payment of money.

(491.) SEC. 33. The said court shall, at the time of the payment of the said sum of money to the clerk, direct and order the same to be paid over to the persons who shall, upon satisfactory proof, be entitled thereto.

"Person" includes municipal or other incorporations

(492.) SEC. 34. In all proceedings in relation to the sale or appropriation of real estate, and ascertaining and renewing compensation therefor for railroad purposes, as prescribed in this act, the term "person" shall be deemed to include municipal or other incorporations.

Corporation to maintain fences.

(493.) SEC. 35. It shall be the duty of any company operating lines of railroad in this Territory to make and maintain a good and sufficient fence on either or both sides their entire railroad, where the lines run through lands which are now or may hereafter be enclosed or improved; and in case they do not make and maintain such fence, along their entire line, if their engines or cars shall kill, maim or destroy any cattle or other domestic animals, they shall pay the owner thereof, a fair market price for the same, unless said owners shall be proven negligent or at fault.

Bell to be placed on locomotive; when to be sounded.

(494.) SEC. 36. A bell of at least twenty pounds' weight shall be placed on each locomotive engine, and be rung at a distance of at least one hundred rods from the place where the railroad shall cross any street, road or highway, and be kept ringing until it shall have crossed, under penalty of one hundred dollars fine for each and every such neglect, which shall be paid into the Territorial treasury. (1) *Provided*, that sounding the locomotive whistle, at least one-

Proviso.

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(1) See sec. (2044.)

fourth of a mile before reaching any highway crossing, shall be equivalent to ringing the bell, except in towns and at terminal places; and the whistle shall also be sounded for every street crossing while passing through towns during the prevalence of fogs, snow and dust storms; said company shall also be liable for all damages which shall be sustained by any persons by reason of such neglect.

Sounding whistle equivalent to ringing bell.

(495.) Sec. 37. Every such company shall start, and run their cars for the transportation of persons and property, at such regular time as they shall fix by public notice; and shall furnish sufficient accommodation for the transportation of all such passengers and property as shall within a reasonable time previous thereto, offer for transportation at the place of starting, at the junction of other railroads, and at sidings or stopping places established for receiving and discharging way passengers and freight; and shall take, transport and discharge such passengers and property at, from and to such places, on the due payment of tolls, freight or fare therefor; if the company or their agents refuse to take and transport any passengers or property, or to deliver the same at the regular appointed places, they shall be liable to the aggrieved party for all damages that may accrue.

Cars to be run at regular times to be fixed by notice; corporation to furnish accommodations for passengers and property.

(496.) Sec. 38. It shall not be lawful to place baggage, freight, merchandise or lumber cars, in rear of passenger cars, and for any violation of this section, the company shall be liable to the party complaining, in the sum of five hundred dollars, and the person, agent, directors or officer so causing the cars to be placed shall be guilty of a misdemeanor, and upon conviction, may be fined in any sum not exceeding five hundred dollars, or imprisonment not exceeding twelve months, or both, and should any accident happen to life or limb, by such unlawful arrangement of cars, the person, agent or officer who so directed, or suffered such arrangement shall be guilty of felony; and upon conviction, shall be imprisoned in the penitentiary for any term not less than one, nor more than ten years. (1)

Baggage, lumber and freight cars not to be placed in rear of passenger cars.

(497.) Sec. 39. In case any passenger shall be injured on the platform of any car, or on any baggage, wood, gravel or freight cars, in violating the printed regulations of the company, posted up at the time in a conspicuous place inside of its passenger cars then in the train; or in violation

Company not liable, if person injured was violating regulations of the company.

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(1) See sec. 216 of penal code, sec. (2046.)

of verbal instruction given by any officer of the train, such company shall not be liable for the said injury.

Passengers refusing to pay may be put out of cars.

(498.) SEC. 40. Any passenger refusing to prepay his fare, or toll on demand, may be put off the cars at any stopping place the conductor or employes of the company may elect.

Conductors, etc., to wear badges.

(499.) SEC. 41. Every conductor, baggage master, engineer, brakeman or other employe of said railroad company employed in a passenger train, or at stations for passengers; shall wear upon his hat or cap, or in some conspicuous place on the breast of his coat, a badge indicating his office or station, and the initial letters of the name of the company by which he is employed, and no collector or conductor, without such badge, shall demand or be entitled to receive from any passenger, any fare, or ticket, or exercise any of the powers of his office or station, or interfere with any passenger or property.

Shall have no authority without such badge.

SEC. 42. (1)

SEC. 43. (2)

Check to be affixed to baggage.

(500.) SEC. 44. A check shall be fixed to every package or parcel of baggage when taken for transportation, by the agent or employe of such company, and a duplicate thereof given to the passenger or person delivering the same; and if such check be refused on demand, the company shall pay to such person the sum of twenty dollars, to be recovered as in action of debt; and further, no fare or toll shall be collected or received from such passenger; and if such person shall have paid said fare, the same shall be returned by the conductor in charge of the train, and on the passenger producing said check, if said baggage or parcel shall not be delivered by the agent or employe of said company, the passenger may be a witness in any suit to prove the contents or value of said baggage, and for the recovery of damages, in any court having jurisdiction.

Duplicate to be given to person owning baggage.

Map of land taken and obtained to be filed with auditor and recorder.

(501.) SEC. 45. Every company organizing under this act or constructing or operating any railroad in this Territory shall, within a reasonable time, after their road shall be finally located, cause a map to be made of the land taken and obtained for the use thereof, and so far as necessary the boundaries of the several counties through which the road may run, and file the same in the office of the auditor of public accounts; and also like maps of the parts thereof located in the different counties, and file the same in the office of the recorder for the county in which said parts of such road shall be, there to remain as a record; maps and profiles shall be certified by the chief engineer, the president and secretary of the company, shall be kept in the office of the secretary of the company, subject to examination by all parties interested.

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(1) Superseded by sec. 215 of an act to establish a penal code. See sec. (2045.)

(2) Superseded by secs. 334 and 335 of penal code, see secs. (2164.) and (2165.)

When acts of incorporation to become void by non-user.

(502.) SEC. 46. If such railroad company shall not within two years after the filing of its original articles of association begin the construction of its road, and expend thereon at least five per cent. of the amount of its capital stock, and finish the road and put the same in full operation within six years, its act of incorporation shall be void.

What damages corporation liable for.

(503.) SEC. 47. Any company constructing or operating lines of railroad in this Territory, shall be liable for all damage which may be sustained through destruction of property caused by fire communicated from their locomotive engines, or neglect on their part to make good and sufficient crossings at points where lines of travel cross the railways, the damage so sustained to be determined before the nearest court having jurisdiction, and to be collected, in case payment is refused, by attachment and sale of any company property which can be found.

SEC. 48. This act shall be in force from and after its passage, and may be altered or amended at the discretion of the Legislative Assembly.

An Act to amend "An act providing for the incorporation of railroad companies and the management of the affairs thereof," approved February 19, 1869.

[*Approved February* 16, 1876.]

(504.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That the act entitled "An act providing for the incorporation of railroad companies and the management of the affairs thereof," approved February 19, 1869, be and the same is hereby amended and supplemented as follows:

Consolidation of two or more railroad companies provided for.

It shall be lawful for two or more railroad companies to consolidate their capital stock, debts, property, assets, and franchises, in any such manner, and on such terms as the boards of directors of such companies may agree upon; but no such consolidation shall take place without the written consent of every shareholder in such companies; and no such consolidation shall in any way relieve such companies or the stockholders thereof from any and all liabilities; and in case of such consolidation, due notice of the same shall be given by advertising for, at least, one month in two daily newspapers published in this Territory, and when such consolidation is completed, such company shall file new articles of association in the office of the auditor of public accounts. Said articles of association shall set forth: the name of the consolidated company; the number of years the same is to continue in existence, not exceeding fifty; the amount of the capital stock of the company, which shall be divided into shares of one hundred dollars; the names and number of directors to manage the affairs of the company, who shall hold their office until others are elected, as shall be provided by the by-laws of the company; the termini of such road, the counties into and through which it passes or is intended to pass, and the length, as near as may be. Such articles shall be signed by the presidents of the respective companies, and their corporate seals shall be attached thereto, which shall be attested by the secretaries of the companies.

SECS. 2, 3, 4, 5, 6, 7. (1)

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(1) These sections are amendatory of the original law and are incorporated therein.

CHAPTER III.

OF IRRIGATION COMPANIES.

SECTION.
505. Organization of irrigation districts. Proviso.
506. Citizens of district may form company; number of trustees; direct how tax levied.
507. Trustees to locate canal or ditch and estimate cost, etc., and report to county court.
508. Duty of county court after notice to hold an election; questions to be submitted; how votes polled.
509. When tax agreed upon to be a law; to be paid to treasurer of company.
510. When proceedings under this act to be null and void.
511. Bonds to be given and where filed.
512. Term of office.
513. Elections to be held annually; notice to be given by county clerk.
514. Trustees to elect one of their number president and to fill vacancies in board; may make by-laws and regulations; may appoint agents, officers, etc.; shall make annual report to county court.
515. Powers of trustees.
516. Proceedings in case lands to be benefitted are not legally claimed.

SECTION.
517. In what cases power extended to another county.
518. When lakes or ponds may be used as reservoirs.
519. When to become property of irrigation district; tax may be levied for repairs; proceedings in case of sudden emergency.
520. Property exempt from taxation.
521. Trustees may purchase lands for canal or ditch.
522. Proceedings in case owner of lands absent or cannot agree with trustees as to price.
523. When title to vest in the company.
524. When trustees may enter upon land without payment.
525. Penalty for injuring property of company.
526. What damages company liable for.
527. Rights reserved by Legislative Assembly.
528. Persons who have constructed canals, etc., before the passage of this act may organize under it.

An Act to incorporate irrigation companies.

[*Approved January* 20, 1865.]

Organization of irrigation districts.

(505.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That, upon the majority of the citizens of any county or part thereof representing that more water is neceseary and that there are streams unclaimed which, if brought out of their natural channels and thrown upon tracts of land under cultivation or to be put under cultivation, can be of value to the interests of agriculture, the county court having jurisdiction may proceed to organize the county or part thereof into an irrigation district; and thereafter the landholders of such district shall be equally entitled to the use of the water in or to be brought into such district, according to their several needs:

Proviso.

Provided, such landholders pay or work out their proportion of the expenses incurred in the construction and keeping in repair of the necessary canals or ditches. (1)

Citizens of district may form company; number of trustees; decide how tax levied.

(506.) SEC. 2. The citizens of an irrigation district, when so organized for the purposes mentioned in the preceding section, may in mass meeting, after a general notice thereof has been given, proceed to the formation of a company by electing, *viva voce*, not less than three nor more than thirteen trustees, a secretary and a treasurer, and decide whether the tax to be levied shall be on all taxable property or upon the lands to be benefitted.

Trustees to locate canal or ditch and estimate cost, etc., and report to county court.

(507.) SEC. 3. It shall be the duty of the trustees so elected to locate the proposed canal or ditch, determine the amount and quality of the land to be benefitted thereby, to estimate the cost, including dams, flumes, locks, waste weirs and all the appurtenances belonging thereto, the amount per acre or the percentage on taxable property which will be necessary to construct the same, less the value of the possession of any unoccupied lands on the line of such canal or ditch, and make a report including these items to the county court: *Provided*, that if the tax to be levied is a property tax, the estimates shall be made from the latest assessment rolls in the county assessor's office.

Duty of county court after public notice to hold an election; questions to be submitted.

(508.) SEC. 4. It shall then be the duty of the county court, after at least six days' public notice shall have been given in each precinct in the said irrigation district, to hold an election, at which the report of the trustees, provided for in the preceding section, shall be made public; and the electors shall vote yes or no upon the following questions: First, do you mutually agree to pay   per cent. property tax or   per acre land tax, to construct the proposed ditch or canal? Second, do you approve the action of the mass meeting in the election of officers? The votes shall be polled and counted in the manner prescribed in "An act regulating elections," approved January 3, 1853: *Provided*, the meaning of the word electors used in this section shall only include tax payers, if a property tax, or landholders, if a land tax, in the said district.

How the votes polled.

When tax agreed upon to be a law; to be paid to treasurer of company.

(509.) SEC. 5. If upon counting the votes it shall appear that two-thirds of the votes polled have been answered in the affirmative, then the tax so agreed upon shall be a law in the said irrigation district; and the tax when collected shall be paid over to the treasurer of said company on his order: *Provided*, that not exceeding one-half of the tax so agreed upon shall be collected at one time, the residue to be collected as the work progresses. (1)

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(1) As provided by act of Feb. 15, 1876.

When proceedings under this act to be null and void.

(510.) Sec. 6. If less than two-thirds of the votes polled are answered in the affirmative, then all proceedings under this act shall be null and of no effect: *Provided*, that if there are objections to the officers so elected by the mass meeting, the electors may write other names on their tickets; the persons having the most votes to be declared elected.

Bonds to be given and where filed.

(511.) Sec. 7. The officers so elected shall file bonds in the office of the clerk of the county court, conditioned for the faithful performance of their several duties; the amount of such bonds to be declared by the county court having jurisdiction.

Term of office.

(512.) Sec. 8. The term of office of the first trustees, secretary and treasurer shall be till the next general election; and thereafter for one year, and until their successors are elected and file bonds.

Elections to be held annually.

Notice to be given by county clerk.

(513.) Sec. 9. All subsequent elections for company officers, and for determining the rate of annual tax, shall be held annually on the day of the general election for Territorial, county and precinct officers, at which time the number of trustees may be changed by a two-thirds vote to any number not less than three nor more than thirteen. Notice of said election shall be given by the clerk of the county court, and said election shall be conducted and returns made thereof in the manner prescribed for the election of Territorial, county and precinct officers. The rate of tax determined at said election by a two-thirds vote, shall be a law in said irrigation district; and all taxes in said district may be assessed and collected and collection enforced in the same manner prescribed by the existing revenue laws, and the powers conferred by said laws upon the county assessors and collectors and the county courts and their clerks are hereby extended to and conferred upon the assessors and collectors and the trustees and their clerks respectively, of said irrigation companies or districts within their jurisdiction. (1)

Trustees to elect one of their number president, and to fill vacancies in board.

(514.) Sec. 10. The trustees at their first meeting shall elect one of their number president, and it shall be their duty, and they shall have power to fill any vacancy which may occur in the board by death, change of residence or otherwise, and the persons chosen for this purpose shall hold office until the next annual election. The trustees shall also have power to meet at such times and places as they may deem expedient to make by-laws, rules and regulations necessary to carry into effect the objects of the people; to appoint agents, subordinates and officers, and employ such workmen as may be requisite; to appoint assessors and collectors, or make agreement with the county assessors and collectors to assess and collect the tax, and notify collectors when additional installments of the tax will be needed; to construct and complete said canals or ditches with all necessary appurtenances thereto; to cause to be kept an accurate account of all receipts and disbursements, and to complete said canals or ditches and settle all accounts of the same. Said trustees shall make an annual report of their proceedings under this act to the county court on or before the first day of February, and shall file with the clerk of the county court a map of said irrigation district showing the location and subdivision of lands therein, and of the company's canals and ditches. (1)

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(1) As provided by act of Feb. 15, 1876.

May make by-laws and regulations.

May appoint agents, officers, etc.

Shall make annual report to county court.

Powers of trustees.

(515.) SEC. 11. The trustees shall have power to sue and be sued, plead and be impleaded, to have and to hold all such real estate and personal property as may be necessary to construct the contemplated ditch or canal, including all appurtenances belonging thereto.

Proceedings in case lands to be benefitted are not legally claimed.

(516.) SEC. 12. If any part of the lands to be benefitted by the proposed ditch or canal are not legally claimed, then such lands may be appraised by the trustees, and shall be held and the possession of them sold by the trustees, as opportunity may offer; and the estimated amount of funds necessary to complete such canal or ditch shall be decreased by the estimated value of such lands, previous to the levy and assessment of any tax.

In what cases power extended to another county.

(517.) SEC. 13. Where the streams to be taken out for irrigation purposes come from counties other than the one in which the district is situated, but where there are no existing claims to the water and where no individual or settlement will be injured thereby, then the power of said irrigation district is hereby extended to said other county, insomuch as said extension may be necessary for the construction of dams to turn the waters and ditches or canals with all necessary appurtenances, as may be necessary to convey the same to where it is to be used.

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(1) As provided by act of Feb. 15, 1876.

When lakes or ponds may be used as reservoirs.

(518.) SEC. 14. Where lakes or ponds in natural basins have outlets, or where such can be made by dams across hollows, such lakes or ponds may be used as reservoirs to store water for lands lying on lower levels; and the people of any irrigation district may, under the provisions of this act, construct such artificial or use such natural basins for irrigation purposes: *Provided,* the waters of such lakes or ponds are in no case to be raised, by dams or otherwise, so as to interfere with or damage settlers upon the margin thereof.

When to become the property of irrigation district, tax may be levied for repairs.

Proceedings in case of sudden emergency.

(519.) SEC. 15. Upon the completion of any canal, ditch or reservoir contemplated in this act, they shall become the property of the irrigation district; and thereafter all funds necessary for repairs upon said canal, ditch or reservoir, and for keeping the same in order, or for altering or enlarging the same may be levied by a tax upon the lands benefitted, the landholders in the district to vote upon the same in the manner heretofore provided for in this act. And in case of any sudden emergency, caused by inundation or otherwise, said trustees are hereby authorized and empowered to make such repairs, or take such measures as they may deem necessary to preserve the canals, or ditches, or other works of said company or district. An account of the expenses incurred in such case shall be presented to the county court, and on receiving the certificate of said court that the work was necessary and the account thereof just, the trustees are hereby authorized and empowered to levy a tax upon all the lands of said district benefitted by such canals or ditches, and said tax may be collected in the same manner and at the same time, if necessary, as provided for the collection of other taxes in said district. (1)

Property exempted from taxation.

(520.) SEC. 16. All property or money belonging to any irrigation district, in the hands of trustees to be expended by them under the provisions of this act, is hereby exempted from all city, county and Territorial taxes.

Trustees may purchase lands for canal or ditch.

(521.) SEC. 17. After any canal or ditch shall have been laid out under this act, or under any special charter where other provision has not been made, the trustees or company may agree with the owners of land through which it will pass for the purchase of so much thereof as may be necessary for the making of the canal or ditch and the appurtenances thereto belonging.

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(1) As provided by act of Feb. 15, 1876.

Proceedings in case owners of land absent or cannot agree with trustees as to price.

(522.) SEC. 18. In every case where the owner of the land so required shall be absent from the county, or shall not from any case be capable in law so to agree, or shall refuse to agree, or ask an exorbitant price, the value of such land and the damages to the owner thereof shall be ascertained in the following manner: First, the occupant of or claimant to such land and the trustees may each select referees, and in case of disagreement they two may select a third, and these referees shall proceed to determine the value of the land under controversy and assess the amount of damages, if any, which each owner of lands or improvements has sustained or will sustain in consequence thereof. Second, the appraisal with a description of the land so appraised shall be acknowledged by the referees signing it before the clerk of the county court in which the lands are situated; and, when so acknowledged, shall be filed in the county clerk's office, within ten days after it shall have been made.

When title to vest in the company.

(523.) SEC. 19. The trustees, upon payment to the rightful claimant of the several sums assessed in the appraisal so made, or upon making a tender thereof when the same shall be refused, shall be entitled to enter upon the lands described in the appraisal, and have and hold the same for the use and benefit of such irrigation district for ever.

When trustees may enter on land without payment.

(524.) SEC. 20. If on any parcel of the lands so described there shall be no person then living, authorized to receive payment for the damages assessed for such parcel, and such damages shall not have been lawfully demanded within ten days after the filing of such appraisal, the board of trustees may enter thereon without payment or tender of such damages, but subject to such payment whenever the same shall be thereafter lawfully required.

Penalty for injuring property of company.

(525.) SEC. 21. If any person shall break, injure or destroy any bank, dam, flume, waste weir, lock or gate on said canal or ditch, or any of the appurtenances belonging thereto or in use upon the same, or take water from the said canal or ditch, except by direction of proper officers, such person so offending shall for every such offense be liable to a civil suit for the recovery of damages, to be prosecuted for, before any court having jurisdiction, by any tax payer in the irrigation district; and shall also be subject to indictment and, upon conviction, shall be punished by fine not exceeding one thousand dollars, or imprisonment not exceeding one year, or by both fine and imprisonment, at the discretion of the court. (1)

What damages company liable for.

(526.) SEC. 22. All companies or districts organized under the provisions of this act shall be liable for any damages which may occur by the breakage of any canal or ditch, which damages may be appraised and collected in the manner prescribed in the eighteenth and nineteenth sections of this act.

Right reserved by Legislative Assembly.

(527.) SEC. 23. Nothing in this act shall be so construed as to interfere with the right of the Legislative Assembly to repeal, alter or amend the same at pleasure.

Persons who have constructed canals, etc., before the passage of this act may organize under it.

(528.) SEC. 24. That persons who have constructed canals, ditches, or dams, and taken out water for irrigation purposes before the passage of the act to which this act is amendatory, are hereby authorized to organize under the provisions of said act, and to enjoy all the rights, powers and privileges guaranteed therein: *Provided,* they shall proceed in the same manner as is provided for the organization of new companies. (2)

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(1) See sec. 349, penal code, C. L. (2179.)
(2) Amendment of Jan. 17, 1866.

CHAPTER IV.

OF INCORPORATIONS FOR GENERAL PURPOSES.

SECTION.
529. Residence of corporators; purposes.
530. Must enter into an agreement, and what it must contain. Proviso. Capital stock may be part in property.
531. The agreement must be acknowledgedged.
532. How officers to qualify.
533. Judge of probate to issue certificate.
534. Powers of the corporation.
535. Increase of capital stock; corporations may consolidate; notice.
536. Corporation may be dissolved.
537. If corporation be dissolved its affairs may be adjusted.

SECTION.
538. Corporation has lien.
539. Officers to act until their successors are qualified.
540. If officers qualify they may continue to act, etc.
541. Corporation to keep correct books.
542. Stock personal property and transferable.
543. Fraudulent practices punished.
544. Same.
545. Certificate of clerk.
546. Non-user.
547. Meetings, votes, etc.
548. Liability of stockholders.
549. Right to modify or repeal reserved.

An Act providing for incorporating associations, for mining, manufacturing, commercial and other industrial pursuits.

[*Approved February* 18, 1870.]

Residence of corporators.

(529.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah :* That hereafter, whenever any number of persons, not less than six, one-third of whom being residents of this Territory, are desirous of associating themselves together for establishing and conducting any mining, manufacturing, commercial, or other industrial pursuit, or the construction or operation of wagon roads, irrigating ditches, or the colonization and improvement of lands, or for colleges, seminaries, churches, libraries, or any benevolent, charitable or scientific association, or for any rightful subjects consistent with the constitution of the United States and the laws of this Territory, and who wish to incorporate for that purpose, may, by complying with the provisions of this act, become a body corporate. (1)

Purposes.

(530.) SEC. 2. They shall enter into an agreement in writing, signed by each of them, and by at least four of their number acknowledged before the probate judge of the county in which they have established or intend to establish their principal place of business, stating the precinct or city, and stating the name of the association, their names and places of residence written in full, the time of its duration, which shall not in any case be less than three years nor more than twenty-five years, the pursuit or business agreed upon, specifying it in general terms, the place of its general business, the amount of stock each party has subscribed, the amount of each share and the limit of capital stock agreed upon, the number and kind of officers for the association, with their qualifications and term of office and the time and manner of their election, removal and resignation, and whether the private property of the stockholders shall be liable for its obligations or not, with such additional clauses as they deem necessary for the conducting of the business and its future safety and welfare. To this there shall be added the oath or affirmation of four or more of their number, to the effect that they have commenced or it is *bona fide* their intent to commence and carry on the business mentioned in the agreement, and that the affiants verily believe that each party to the agreement has paid, or is able to and will pay the amount of his stock subscribed, provided that said acknowledgment shall not be made before the probate judge until twenty-five per cent. of the stock subscribed by each shareholder shall have been paid in.

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(1) As amended Feb. 20, 1874.

Must enter into an agreement, and what it must contain.

Provided, that where the amount of the capital stock of any corporation which may be formed under the provisions of this act, or of the act to which this is amendatory, consists of the aggregate valuation of property, for the working, development, management, use, sale or exchange, of which such corporation shall be formed, no actual subscription in money to the capital stock of such corporation shall be necessary; but each owner of such property shall be deemed to have subscribed such an amount to the capital stock of such corporation as under the by-laws will represent the fair estimated cash value of so much of said property, the title to which he may, by deed of trust, convey, or may have conveyed, or vested in such corporation; such subscription to be deemed to have been paid in upon the execution and delivery to such corporation of such conveyance or deed of trust: *Provided further*, that this sec-

Proviso.

Capital stock.

May be part in property.

tion shall not be so construed as to prohibit the stockholders of any corporation from regulating the mode of making subscriptions to its capital stock, and calling in the same by by-laws or express contract: *And provided further*, that where subscriptions to the capital stock of any company are paid in other than money, the fact shall be so stated, and the kind of property, with a description thereof, specified in the articles of agreement. (1)

Must show.

The agreement must be acknowledged

(531.) SEC. 3. The agreement, with the oath or affirmation, shall, within ten days from its due execution, be deposited with the probate clerk of the county in which the general business is to be carried on, and shall be by him recorded in a book to be prepared for that purpose and kept in his office, the expenses of which recording shall be paid by the association.

How officers to qualify.

(532.) SEC. 4. Before the first or any other officers shall enter upon the duties of their respective offices, they shall take and subscribe an oath of office, and enter into bonds to the acceptance of the probate judge, that they will discharge the duties of such office to the best of their judgment, and that they will not do nor consent to the doing of any matter or thing relating to the business of the association with intent to defraud any stockholder or creditor or the public. And the oath or affirmation and bonds shall be filed in said office and recorded.

Judge of probate to issue a certificate.

(533.) SEC. 5. So soon as the agreement and oath or affirmation and oath of office and bonds are filed and recorded, the clerk of the probate court shall, under the direction of the probate judge, issue under the seal of the court, a certificate to the association, therein stating in general terms the facts, that the agreement and oath or affirmation and oath of office and bonds have been filed in his office, which shall be sufficient to constitute the association a body corporate, with succession as specified in the agreement.

Powers of the corporation.

(534.) SEC. 6. The corporation in its name shall have power to make contracts, to sue and to be sued, to have a seal, which it may alter at pleasure, to buy, use, and sell or dispose of personal property, to buy, use, sell or dispose of all such real estate as shall be necessary for its general business and such as shall be necessary for the collection of its debts or judgments or decrees in its favor; but it shall not have power to enter into, as a business, the buying and selling of real estate. It may make all such by-laws, rules and regulations, not inconsistent with the laws in force, or which may be in force in this Territory, and not inconsistent with other corporate rights and vested privileges, as may be necessary to carry into effect the object of the association; and such by-laws, rules and regulations may be made in a general meeting of the stockholders or by a board of officers elected by them. It may as hereinafter provided increase its capital stock or dissolve the corporation.

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(1) As amended Feb. 20, 1874.

Increase of capital stock.

(535.) SEC. 7. If more capital than is first subscribed be needed, the stockholders may at any meeting called for that purpose, by a two-thirds vote of all the stockholders, increase the same by the sale of more shares, and thereafter the stock may be increased accordingly; but in no case shall the capital stock exceed the sum of ten millions of dollars. Where two or more corporations organized under this act shall desire to unite and consolidate, it shall be lawful for them so to unite and consolidate: *Provided*, that at a regular meeting of said corporations, two-thirds of the stockholders thereof shall by vote determine to so unite and consolidate: *Provided further*, that notice of the meetings of such several corporations for such purpose shall be called, by notice published in some newspaper published at Salt Lake city for at least thirty days before such meetings shall be held. (1)

Corporations may consolidate.

Notice.

Corporation may be dissolved.

(536.) SEC. 8. Any corporation formed under this act, may dissolve and disincorporate itself by its officers presenting to the probate judge of the county in which the principal office of the company is located, a statement setting forth that at a meeting of the stockholders called for that purpose, it was decided by a two-thirds vote of all the stockholders to disincorporate and dissolve the incorporation. Notice of the application shall then be given by the clerk, which notice shall set forth the nature of the application and shall specify the time and place at which it is to be heard, and shall be published in some newspaper having general circulation in the Territory, once a week for one month. At the time or place appointed, or at any other time or place to which it may be postponed by the judge, said judge shall proceed to consider the application, and if satisfied that the corporation has taken the necessary vote to dissolve itself, and that all claims against the corporation are discharged, he shall enter an order declaring it dissolved.

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(1) As amended Feb. 16, 1872.

If corporation be dissolved its affairs may be adjusted.

(537.) SEC. 9. Whenever the corporation shall be dissolved, if there shall be debts or claims due to it, or debts or obligations against it, or assets, real or personal, not converted into money for distribution, the corporate powers shall be continued for the purpose of collecting the debts or claims due, and paying its debts or obligations and selling and converting its assets into money and distributing the same among the stockholders; and if no sufficient means of effecting the object and intent of this section be provided in the agreement or by-laws, the court shall have power on the application of any person interested, to make all needful rules and orders and judgments necessary to carry the provisions of this section into effect.

Corporation has lien.

(538.) SEC. 10. The corporation shall collect of the stockholders the amount of stock by them subscribed, in such installments and at such times as shall be settled by the agreement or by-laws. It shall have a lien on the amount paid in and the dividends thereon for any balance due for the stock of a delinquent stockholder.

Officers to act until their successors are qualified.

(539.) SEC. 11. The officers, after being fully qualified to act, may continue to act, unless removed for misconduct, until their successors are qualified.

If officers qualify they may continue to act, etc.

(540.) SEC. 12. If, from any cause, the officers shall not be elected at the time provided in the agreement or by-laws, such election may be made at such other time as the officers and directors may appoint. If such appointment be not made within three months, then at the call of any six stockholders.

Corporation to keep correct books.

(541.) SEC. 13. It shall be the duty of the corporation to keep true and correct books of its proceedings and business.

Stock personal property and transferable.

(542.) SEC. 14. The stock shall be deemed personal property, and may be transferred in such manner as may be provided in the agreement or by-laws.

Fraudulent practices punished.

(543.) SEC. 15. If the secretary, clerk, or other person having the charge of keeping the books of the corporation, or any other person whose duty it is to make entries in such books, shall willfully omit to make the proper entries, or shall knowingly and willfully make any false and fictitious entries therein, with intent to deceive or defraud the corporation or any stockholder, creditor or other person, he and his counselors, advisers, aiders and abettors shall be deemed guilty of forgery, and shall be punished as provided by law for the punishment of the crime of forgery. (1)

(544.) SEC. 16. If any officer, director, employe or other person having the charge or management of any money or other property of the corporation, or to whom any such money or other property shall be entrusted for any purpose whatever, shall fraudulently misapply, carry away, secrete, conceal or convert to his own use any such money or other property with intent to defraud such corporation, or any stockholder, creditors or other person, he, his counselors, aiders and abettors shall be deemed guilty of embezzlement, and shall be punished as provided by law for the punishment of embezzlement. (2) Same.

(545.) SEC. 17. It shall be the duty of the clerk, with whom the records in this act mentioned are kept, at the request of any person interested therein, or who needs the same for evidence, on being paid his fees therefor, to give a transcript of such record under the seal of said court, which transcript shall be conclusive evidence of such record, and *prima facie* evidence of the facts therein stated. Certificate of clerk.

(546.) SEC. 18. Non-use for two years of the franchise herein given, or non-compliance with any of the provisions of this act, shall be a forfeiture of the privileges shall herein be granted. Non-user.

(547.) SEC. 19. Whenever a meeting of the stockholders, other than stated meetings shall be necessary, notice shall be given in such manner as may be prescribed in the agreement or by-laws. At all meetings each shareholder shall be entitled to one vote for each share of stock which he or she may have in his or her own right, or any, held by him or her in trust for others, as administrator, executor or guardian, and such votes may be given in person or by an authorized agent or proxy. Meetings, votes, etc.

(548.) SEC. 20. If the agreement mentioned in section two of this act, provide that the individual property of the stockholders shall be liable for the corporate obligations, then such property shall be deemed and taken to be so liable; if it provide that such individual property shall not be liable, then it shall be deemed and taken to be not liable: *Provided*, that the joint property of the association and the unpaid stock shall be liable for the debts of the association. Liability of Stockholders.

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(1) See sec. 324, penal code, C. L. (2154.)

(2) See sec. 291, penal code, C. L. (2121.)

Right to modify or repeal reserved.

(549.) SEC. 21. The governor and Legislative Assembly may hereafter modify or repeal this act; but if it be repealed, or if the franchise of any corporation organized under this act, shall be forfeited, the corporation may continue for the purposes specified in section nine of the act to which this is an amendment. (1)

CHAPTER V.

CHURCH INCORPORATION.

SECTION.
550. Body corporate; name and style; seal.
551. Powers of trustee in trust and assistants; bonds; term of office; duty of clerk of conference.

SECTION.
552. May make rules, etc.
553. Registry.
554. Vacancies.
555. Restriction.

An Ordinance incorporating the Church of Jesus Christ of Latter-day Saints.

[*Approved February* 8, 1851.]

Body corporate.

(550.) SEC. 1. *Be it ordained by the General Assembly of the State of Deseret:* That all that portion of the inhabitants of said State, which now are, or hereafter may become residents therein, and which are known and distinguished as "The Church of Jesus Christ of Latter-day Saints," are hereby incorporated, constituted, made and declared a body corporate, with perpetual succession, under the original name and style of "The Church of Jesus Christ of Latter-day Saints," as now organized, with full power and authority to sue and be sued; defend and be defended, in all courts of law or equity in this State; to establish, order, and regulate worship; and hold and occupy real and personal estate, and have and use a seal, which they may alter at pleasure.

Name and style.

Seal.

Powers of trustee in trust and assistants.

(551.) SEC. 2. And be it further ordained that said body or church as a religious society, may, at a general or special conference elect one "trustee in trust," and not to exceed twelve assistant trustees, to receive, hold, buy, sell, manage, use and control the real and personal property of said church, which said property shall be free from taxation; which trustee and assistant trustees, when elected or appointed, shall give bonds with approved security, in whatever sum the said conference may deem sufficient, for the faithful performance of their several duties; which said bonds, when approved, shall be filed in the general church recorder's office, at the seat of general church business, when said bonds are approved by said conference; and said trustee and assistant trustees shall continue in office during the pleasure of said church; and there shall also be made, by the clerk of the conference of said church, a certificate of such election or appointment of said trustee and assistant trustees, which shall be recorded in the general church recorder's office, at the seat of general church business; and when said bonds are filed, and said certificates recorded, said trustee or assistant trustees may receive property, real or personal, by gift, donation, bequest, or in any manner, not incompatible with the principles of righteousness, or the rules of justice; inasmuch as the same shall be used, managed, or disposed of for the benefit, improvement, erection of houses for public worship and instruction, and the well-being of said church.

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(1) As amended Feb. 20, 1874.

Bonds.

Term of office.

Duty of clerk of conference.

(552.) SEC. 3. *And be it further ordained:* That, as said church holds the constitutional and original right, in common with all civil and religious communities, "to worship God according to the dictates of conscience;" to reverence communion agreeably to the principles of truth, and to solemnize marriage compatible with the revelations of Jesus Christ; for the security and full enjoyment of all blessings and privileges, embodied in the religion of Jesus Christ free to all; it is also declared, that said church does, and shall possess and enjoy continually, the power and authority, in and of itself, to originate, make, pass, and establish rules, regulations, ordinances, laws, customs, and criterions, for the good order, safety, government, conveniences, comfort, and control of said church, and for the punishment or forgiveness of all offenses, relative to fellowship, according to church covenants; that the pursuit of bliss, and the enjoyment of life, in every capacity of public association and domestic happiness, temporal expansion, or spiritual increase upon the earth, may not legally be questioned: *Pro-*

May make rules, etc.

vided, however, that each and every act, or practice so established, or adopted for law, or custom, shall relate to solemnities, sacraments, ceremonies, consecrations, endowments, tithings, marriages, fellowship, or the religious duties of man to his Maker; inasmuch as the doctrines, principles, practices, or performances, support virtue, and increase morality, and are not inconsistent with, or repugnant to the Constitution of the United States, or of this State, and are founded in the revelations of the Lord.

Registry. (553.) SEC. 4. *And be it further ordained:* That said church shall keep, at every full organized branch or stake, a registry of marriages, births, and deaths; free for the inspection of all members, and for their benefit.

Vacancies. (554.) SEC. 5. *And be it further ordained:* That the presidency of said church shall fill all vacancies of the assistant trustees, necessary to be filled, until superseded by the conference of said church.

Restriction. (555.) SEC. 6. *Be it further ordained:* That no assistant trustee or trustees shall transact business in relation to buying, selling, or otherwise disposing of church property; without the consent or approval of the trustee in trust of said church.

CHAPTER VI.

INCORPORATING PERPETUAL EMIGRATING FUND.

SECTION.

556. Act amended; confirmed; general conference to elect, etc.
557. Body corporate. Title.
558. Powers.
559. Majority, etc., form a quorum; powers.
560. Bonds.
561. Same.
562. Settlement annually; officers, etc., to make returns.
563. Duties of treasurer.
564. Power to appoint; duty of officers, etc.
565. Proceeds how applied.
566. Term of office.
567. No officer, etc., to retain funds; may receive remuneration.
568. Responsibility of persons aided.
569. Probate judge to take charge of certain property.
570. Responsibility of individuals.
571. Property to go to perpetual emigrating fund.
572. Penalty for non-compliance.

An Act amending, confirming and legalizing an "Ordinance incorporating the Perpetual Emigrating Fund company."

[*Approved January* 12, 1856.]

Act amended; confirmed.

(556.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That the "Ordinance incorporating the Perpetual Emigrating Fund company," passed by the provisional government of the State of Deseret, approved Sept. 14, 1850, is hereby amended, confirmed and legalized as follows:

General conference to elect, etc.

Be it ordained by the General Assembly of the State of Deseret: That a general conference of the Church of Jesus Christ of Latter-day Saints, or a special conference of said church, to be called at such time and place as the first presidency of said church shall appoint, is hereby authorized to elect, by a majority, a company of not less than thirteen men, one of whom shall be designated as their president, and the others as assistants.

Body corporate; title.

(557.) SEC. 2. This company is hereby made and constituted a body corporate, under the name and style of "The Perpetual Emigrating Fund company;" and shall have perpetual succession, and may have and use a common seal which they may alter at pleasure.

Powers.

(558.) SEC. 3. Said company, under the name and style aforesaid, shall have power to sue and be sued, plead and be impleaded, defend and be defended in all courts of law or equity, and in all actions whatsoever; to purchase, receive and hold, either by donation, or deposit, or otherwise, money and every kind of property real and personal; to emit bills of credit and exchange; to sell, lease, convey or dispose of property real and personal; and, finally, to do and perform any and all such acts as shall be necessary and proper for the interest, protection, convenience or benefit of said company.

Majority, etc., form a quorum; powers.

(559.) SEC. 4. A majority or such members of said company as may at any time be in the immediate neighborhood of their president, shall form a quorum to do business, and shall elect a secretary and treasurer, and shall have power to select and appoint all other officers and agents necessary to transact the business of said company.

Bonds.

(560.) SEC. 5. The president and assistants shall individually give bond and security in a sum not less than ten thousand dollars, to be approved by the first president of said church, and filed in the general church recorder's office.

Same.

(561.) SEC. 6. The secretary and treasurer, and all other officers or agents appointed by the company, shall give bonds and security, to be approved by the president of the company, and filed in the company secretary's office.

Settlement annually.

Officers, etc., to make returns.

(562.) SEC 7. There shall be a general settlement of all business transactions of the company, so far as returns received from abroad will permit, as often as once in each year; and it shall be the duty of all the officers and agents to make out correct returns of all their transactions, and deliver or transmit them to the secretary of said company on or before the first day of December in each year; and, as soon as practicable thereafter, it shall be the duty of the president of the company to produce or exhibit a manifest thereof, and file it in the secretary's office and file a copy of said manifest in the general church recorder's office.

Duties of treasurer.

(563.) SEC. 8. It shall be the duty of the treasurer to keep an accurate account of all money or property received and disbursed by him, and make returns as hereinbefore directed.

Powers to appoint; duty of officers, etc.

(564.) SEC. 9. The company shall have the power of appointing and removing their officers and agents at pleasure; and it shall be the duty of said persons when removed to pay and pass into the hands of their respective successors, or of the company, all moneys, property, books, papers and accounts, of every name and nature, belonging or in any way pertaining to the business of said company.

Proceeds how applied.

(565.) SEC. 10. The entire proceeds of the business of this company shall inure to the perpetual emigrating fund for the poor, whether arising from donations, insurance, deposits, exchange, increased value of property, or in any other way or manner whatsoever; and the general business of the company shall be devoted, under the direction and supervision of the first presidency of said church, to promote, facilitate and accomplish the emigration of the poor.

Term of office.

(566.) SEC. 11. The members of this company shall hold their offices at the pleasure of the conferences hereinbefore mentioned; but the first presidency of said church shall have power to fill all vacancies that may occur by death, removal, or otherwise; and all persons so appointed shall qualify and serve as hereinbefore directed, and hold their offices until superseded by an election.

No officer, etc., to retain funds; may receive remuneration.

(567.) SEC. 12. No officer, agent or member of the company shall be permitted to retain in his hands any portion of the funds of the company as compensation, but may receive such remuneration as shall be awarded upon settlement with the board of president and assistants.

Responsibility of persons aided.

(568.) SEC. 13. All persons receiving assistance from the Perpetual Emigrating Fund company shall be held responsible therefor until paid.

An Act providing for the management of certain property.

[*Approved January* 20, 1854.]

Probate judge to take property belonging to deceased persons.

(569.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That the probate judge in each county is empowered and required to take possession of all property left by any deceased or abscondent person, when there is no legal claimant known, or sufficiently near to see to it in season; and shall forthwith appraise and make two lists of said property, and keep one on file, and furnish one to the treasurer of the perpetual emigrating fund. (1)

Responsibility of individuals.

(570.) SEC. 2. It is hereby made the duty of every person having such property in his possession, or knowing it to be in the possession of any other person, to report the property forthwith, and the name of the person in possession thereof, to the probate judge of the county where said possessor is at the time; and said judge shall take possession of such property as soon as practicable, and proceed therewith as required above.

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(1) See secs. (713.) (730.) (731.) and (982.)

Property to be put into perpetual emigrating fund.

(571.) SEC. 3. At the earliest practicable date, the probate judge shall place said property, or the avails thereof, in the possession of said fund, the value thereof to remain there until proven away by a legal claimant, when said judge shall give an order therefor on the treasurer of the fund. (1)

Penalty for non-compliance.

(572.) SEC. 4. A failure to comply with the requisitions of this act, may be punished by costs, damages, and fine, adjudged by any court having jurisdiction.

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(1) See secs. (713.) (730.) (731.) and (982.)

TITLE XII.

OF PUBLIC INSTRUCTION.

CHAPTER I. Of the university.
CHAPTER II. Of district schools and school superintendents.

CHAPTER I.

OF THE UNIVERSITY.

SECTION.
573. Incorporating the University of the State of Deseret.
574. Government vested in chancellor and board of regents.
575. Chancellor chief executive officer.
576. Powers and duties of chancellor and board of regents.
577. Secretary how appointed and duties.
578. Chancellor, regents and secretary to take official oath and file bonds.
579. Treasurer to be elected at same time and manner as chancellor and regents; duties of treasurer.
580. Treasurer to take official oath and file bonds.

SECTION.
581. Vacancies how filled.
582. Officers of the university to open books for subscription.
583. Regents to have a seal.
584. When funds sufficient, free instruction for certain persons to be provided.
585. Secretary and treasurer to report to auditor of public accounts.
586. Election of board of commissioners provided for.
587. Duty of commissioners.
588. Compensation of commissioners.

An Ordinance incorporating the University of the State of Deseret.

[*Approved February* 28, 1850.]

(573.) SEC. 1. *Be it ordained by the General Assembly of the State of Deseret:* That a university is hereby instituted and incorporated, located at Salt Lake city, by the name and title of the University of the State of Deseret.

Incorporating the University of the State of Deseret.

(574.) SEC. 2. The powers of the university shall be vested in a chancellor and twelve regents, the number of which regents may be increased when necessary, who shall be chosen by the joint vote of both houses of the General Assembly, and shall hold their office for the term of one year, and until their successors are qualified.

Government vested in chancellor and board of regents.

Chancellor chief executive officer.

(575.) SEC. 3. The chancellor shall be the chief executive officer of the university, and chairman of the board of regents.

Powers and duties of chancellor and board of regents.

(576.) SEC. 4. The chancellor and board of regents are a body corporate, to sue and be sued; to act as trustees of the university; to transact or cause to be transacted all business needful to the prosperity of the university in advancing all useful and fine arts and sciences; to select and procure lands; erect and purchase buildings; solicit donations; send agents abroad; receive subscriptions; purchase books, maps, charts and all apparatus necessary for the most liberal endowment of any library and scientific institution; employ professors and teachers; make by-laws; establish branches of the university throughout the State; and do all other things that fathers and guardians of the institution ought to do.

Secretary how appointed and duties.

(577.) SEC. 5. The chancellor and regents may appoint a secretary, and define his duties.

Chancellor, regents and secretary to take official oath and file bonds.

(578.) SEC. 6. The chancellor, regents and secretary, before entering upon the duties of their respective offices, shall each take an oath of office, and file a bond in the office of the auditor of public accounts, with approved securities, in a sum not less than ten thousand dollars, conditioned for the faithful performance of their several duties; which sum may be increased at the discretion of the executive of the State.

Treasurer to be elected at the same time and manner as chancellor and regents. Duties of treasurer.

(579.) SEC. 7. There shall be a treasurer of the university elected in the same manner and for the same time as the chancellor and regents, whose duty it shall be to receive and safely keep the funds of the university or dispose of the same as he shall be directed by the board of regents; and keep accurate records of all funds that may come into his possession; and keep his books open at all times for the inspection of the chancellor and regents, or any of them, and of the executive and secretary of State.

Treasurer to take official oath and file bonds.

(580.) SEC. 8. The treasurer, before entering upon the duties of his office, shall take an oath of office and file a bond, with approved security, in the office of the auditor of public accounts, in the sum of one hundred thousand dollars, conditioned for the faithful performance of his duties, which sum may be increased at the discretion of the executive of the State.

Vacancies how filled.

(581.) SEC. 9. Should a vacancy occur in the board of regents or any office in the institution, during the recess of the General Assembly, the executive of the State may fill such vacancy.

Officers of the university to open books for subscriptions, etc.

(582.) SEC. 10. It shall be the duty of the officers of the university to prepare and open books, and be ready to receive subscriptions, donations and appropriations, on or before the sixth day of April next; and shall legibly enter upon their books all subscriptions and donations to the university, with the names of the donors, time and place, and preserve the same.

Regents to have seal.

(583.) SEC. 11. The board of regents shall have a seal known as the seal of the university, which may accompany all their official correspondence, and all other legal documents given under the hands of the regency of the university.

When funds sufficient, free instruction for certain persons to be provided.

(584.) SEC. 12. It shall be the duty of the chancellor and board of regents, as soon as the funds arising from donations or otherwise may justify, to establish a free school institution for the benefit of orphans and other indigent worthy persons.

Secretary and treasurer to report to auditor of public accounts.

(585.) SEC. 13. The secretary and treasurer shall each present a full and explicit report in writing of the situation, funds and doings of the university in their several departments, by the fifteenth of October in each year, to the auditor of public accounts.

An Act to provide for the selection and location of a quantity of land, equal to two townships, for the establishment of a university.

[*Approved January* 21, 1859.]

Election of board of commissioners provided for.

(586.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That there shall be elected by the qualified electors, at the next general election to be held on the first Monday of August, 1859, and annually thereafter at each subsequent said general election, a board of commissioners, to consist of three men, to select and locate, from time to time, as in their judgment they may deem best, a quantity of land equal to two townships, in accordance with the provisions of the third section of an act of Congress entitled "An act to establish the office of surveyor general of Utah, and to grant land for school and university purposes," approved Feb. 21, 1855.

Duty of commissioners.

(587.) SEC. 2. Said commissioners, after being duly sworn faithfully to discharge their duties, shall proceed, as soon as practicable after the land shall have been surveyed, to select and locate such lands in such manner as they shall deem proper, or as the Legislative Assembly may direct; and they shall, from time to time, inform the surveyor general of the precise tract or tracts so selected or located, or, should the surveyor general's office be closed, they shall in like manner inform the register of the land office in the district where said tract or tracts are selected or located by them; and shall annually report and present a schedule of the sections or tracts of lands selected by them and approved by the surveyor general, or by a register or registers of public lands, as the case may be, to the Legislative Assembly.

Compensation of commissioners.

(588.) SEC. 3. Said commissioners shall receive, out of the Territorial treasury, out of any money not otherwise appropriated, such compensation as may be allowed by the Legislative Assembly, and shall keep a suitable book, in which they shall enter and record the numbers of the sections, or the part or parts thereof, so located by them; and shall transmit to their successors in office all books and papers appertaining to the location of said lands.

CHAPTER II.

OF DISTRICT SCHOOLS AND SCHOOL SUPERINTENDENTS.

SECTION.
589. County courts to divide counties into school districts; may change boundaries; may consolidate two or more districts. Settlers near county lines may be formed into district by county courts of such counties.
590. Number of trustees in each district; to take official oath and file bonds.
591. Powers and duties of trustees.
592. When more than one-fourth of one per cent. tax necessary for school purposes, trustees to approximate cost and the rate per cent. may be increased by two-thirds vote of qualified voters, at meeting called for that purpose.
593. What notice necessary for election of trustees and rate per cent. of tax; contents of notice; how to be given; may vote viva voce or by ballot.
594. What officers may be appointed by trustees.
595. Power and duty of assessor.
596. Power and duty of collector.
597. Trustees to visit schools; take census and report to county superintendent; form of report; penalty for neglect of duty.
598. To be termed district schools; to be entitled to equitable apportionment of school fund.
SECTION.
599. County court to appoint board of three examiners; their powers and duties.
600. Teachers to furnish trustees quarterly report; form of report.
601. Majority of trustees may transact business. In case of vacancy must call an election.
602. Providing for election of Territorial superintendent; term of office; to take official oath and give bonds; election of county superintendents; term of office, bonds, etc.
603. Duty of Territorial superintendent.
604. Territorial and county superintendents and president of university to decide on text books.
605. Duty of county superintendents. Form of report.
606. Duty of county superintendents in relation to school funds.
607. School tax upon railroads to be reported to and collected by county collectors and paid to county treasurers; to be drawn by trustees.
608. Appropriation for schools. How funds to be used.
609. How the apportionment mentioned in preceding section to be made.
610. Construction of this act as to former assessments and contracts.
611. In whom property vests.

An Act providing for the establishment and support of district schools, and for other purposes.

[*Approved February* 18, 1876.]

County court to divide county into school districts; may change boundaries; may consolidate two or more districts.

(589.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That the county courts shall divide their respective counties into school districts where not already so divided, number the same, prescribe limits, change the boundaries thereof, and may consolidate two or more school districts into one should the public good so require: *Provided*, that where school districts have built school houses by a tax on the whole district, said district shall not be divided until equitable provision has been made for school houses in the new districts to be organized. Settlers on or near county lines of two or more counties* may be formed into school districts, by the mutual agreement of the county courts of such counties.

Settlers near county lines may be formed into districts by county courts of such counties.

Number of trustees in each district; to take official oath and file bonds.

(590.) SEC. 2. In each school district there shall be three school trustees, who shall be elected by the qualified voters resident in the district; said trustees shall qualify by taking and subscribing an oath of office, and give bonds to the county court of the county in which they reside in such sums and with such sureties as the probate judge thereof may approve, conditioned for the faithful performance of the duties of their offices. Their term of office shall be for two years and until their successors shall be elected and qualified.

Powers and duties of trustees.

(591.) SEC. 3. The trustees shall provide suitable school houses and keep the same in repair, employ teachers, and furnish fuel, maps, charts, and other suitable articles for school purposes, and may at their option collect tuition fees. They are also hereby empowered to assess and collect, annually, a tax of one-fourth of one per cent. on all taxable property within their districts, for school purposes, and shall have power to remit taxes, to prescribe the manner in which school shall be conducted, to establish out-houses, play-grounds, and other appurtenances.

When more than one-fourth of one per cent. tax necessary for school purposes, trustees to approximate costs and rate per cent. may be increased by two-thirds vote of qualified voters at meeting called for that purpose.

(592.) SEC. 4. Whenever more than one-fourth of one per cent. per annum shall be necessary to purchase, build, repair or furnish school houses or for other school purposes, an estimate of the approximate cost thereof shall be made by the trustees, and the rate per cent. may be increased to any sum not exceeding three per cent. per annum, as shall be decided by a two-thirds majority vote of the qualified voters resident in the district, present at a meeting called for that purpose: *Provided,* that except by virtue of the annual tax of one-fourth of one per cent., provided for in section three of this act, the property of non-residents shall not be liable to tax for the payment of teachers.

What notice necessary for election of trustees and rate per cent. of tax.

(593.) SEC. 5. For the calling of a meeting for the election of trustees, or for voting on the rate per cent. of tax to be assessed, notice shall be given ten days before the time appointed for holding such election or taking such vote, by advertising, at least three times, in some newspaper published in the county and having a general circulation therein, if there be such paper published in the county, and by posting up notices in three public places in the district; said advertisement or notice shall state distinctly the time, place and object of said meeting, said notice shall be given by at least five permanent residents of the district, but if the district be organized, then said notice shall be given by the trustees. At such meeting trustees may be elected, or a tax levied *viva voce*, or by ballot, as the meeting may determine.

Contents of notice.

How to be given.

May vote viva voce or by ballot.

(594.) SEC. 6. The trustees shall have power to appoint a clerk, an assessor, collector and treasurer, and prescribe their qualifications.

What officers may be appointed by trustees.

(595.) SEC. 7. The assessor shall, within such time as the trustees may direct, make an assessment of all the taxable property in his district, and report the same to the trustees, and when appealed to, the trustees shall have power to examine said assessment, and, if necessary, correct the same; and their decision shall be final.

Power and duty of assessor.

(596.) SEC. 8. The collector shall pay all moneys or property received on taxes to the trustees or to the treasurer, as the trustees may direct; and whenever taxes shall have been assessed in accordance with this act, and the tax payers shall have been duly notified of the amount due, a majority of the trustees or the collector shall have power to commence suits at law in any court having jurisdiction, against any tax payer who shall neglect or refuse to pay said tax; and upon any judgment so recovered no real or personal property shall be exempt from execution to make the amount of such taxes and costs, and any conveyance of such property made by the trustees shall be valid.

Power and duty of collector.

(597.) SEC. 9. The trustees shall visit, officially, each school in their respective districts, at least once during each term; and, on or before the second Monday in October, in each year, take a census of the children, between the ages of six and sixteen years, residing in their districts; and within ten days thereafter, shall make a report to the county superintendent hereinafter provided for, stating the condition of the school or schools under their supervision, and particularly the items contained in the following form:

Trustees to visit school, take census and report to county superintendent.

SCHOOL TRUSTEES'

Annual Report of School District No..., in the Co. of....., U.T., ending......, 18..., ...Trustees.

Form of report.

No. of district.	No. of schools.	Grade of schools.	Branches taught.	No. of male teachers.	No. of female teachers.	No. of male children in the district between the ages of six and sixteen years.	No. of female children in the district between the ages of six and sixteen years.	No. of male scholars enrolled.	No. of female scholars enrolled.	Average daily attendance.	Amount paid to teachers.	To males.	To females.	No. of days schools have been taught during the year.	No. of school libraries.	No. of volumes in each.	Present condition of schools, buildings, etc.	Amount of building funds raised.	Amount of taxes appropriated to the use of schools.	Value of school property.	REMARKS.

Penalty for neglect of duty.

Trustees failing to so report shall be liable to prosecution on their bonds for neglect of duty; said suit to be prosecuted by the county superintendent, and any amount so recovered shall revert to the benefit of the district.

To be termed district schools; to be entitled to equitable portion of school funds.

(598.) SEC. 10. All schools organized under the direction of the trustees in the respective school districts of this Territory, shall be known, in law, by the name and title of district schools, and shall be entitled to a just and equitable apportionment of any public school fund, arising from the general government or by legislative enactment of the Territory.

County court to appoint board of three examiners.

Their powers and duties.

(599.) SEC. 11. The county court of each county shall appoint, in their respective counties, where not already done, a board of examination, to consist of three competent persons, who shall judge of the qualifications of school teachers applying for schools; and all applicants of a good moral character, considered competent, shall receive a suitable certificate, signed by the board, without which no person shall be eligible to employment, as teacher, by the trustees.

Teachers to furnish trustees quarterly report.

(600.) SEC. 12. Teachers of schools shall furnish their respective trustees with a quarterly report of their schools, in the following form :

SCHOOL TEACHER'S

Quarterly Report of School No..., District No...,Co. of..., U. T., ending..., 18..., ...Teacher.

Form of report.

NUMBER OF PUPILS.	Ages from...... to........	No. of males.	No. of females.	Total.	Average daily attendance.	BRANCHES TAUGHT.											School books used.	REMARKS.
						Alphabet.	Spelling.	Reading.	Writing.	Geography.	Grammar.	Arithmetic.	Book-keeping.	History.	Music.	Drawing.		

(601.) SEC. 13. A majority of the trustees shall have power to transact business; and in case of a vacancy in any school district, by death, resignation, or otherwise, the remaining trustees shall immediately call an election to fill such vacancy.

Majority of trustees may transact business; in case of vacancy must call an election.

(602.) SEC. 14. At the general election for the year one thousand eight hundred and seventy-seven, and biennially thereafter, a Territorial Superintendent of District Schools shall be elected, whose term of office shall be for two years, and until his successor shall be elected and qualified; and before entering upon the duties of his office, he shall qualify by taking and subscribing an oath, and giving bonds with approved sureties to the people of the Territory of Utah in the penal sum of ten thousand dollars, conditioned for the faithful performance of the duties of his office, said oath, bond, and securities to be approved and filed with the auditor of public accounts. At the same general election, and biennially thereafter, there shall also be elected for each county in the Territory, a Superintendent of District Schools, whose term of office shall be for two years, and until his successor shall be elected and qualified; and before entering upon the duties of his office he shall qualify by taking and subscribing an oath of office, and giving bonds, with approved security, in such sum as shall be prescribed by the probate judge of the county, which oath and bond shall be filed with the clerk of the county court.

Providing for an election of Territorial superintendent.

Term of office.

To take official oath and give bonds.

Election of county superintendents.

Term of office, bonds, etc.

(603.) SEC. 15. The Territorial superintendent shall keep a record of the condition of district schools throughout the

Duty of Territorial superintendent.

Territory, shall furnish each county superintendent with a record headed according to form for trustees' reports, and also blank forms of said reports, together with blank forms of school teachers' reports, as contemplated in this act; and he shall cause to be printed such a number of the forms described in this act as shall be necessary for distribution to the trustees and teachers throughout the Territory, and distribute the same.

Territorial and county superintendents and president of university to decide on text books.

(604.) SEC. 16. The Territorial and county superintendents and the president of the faculty of the University of Deseret, or a majority of them, shall, at a convention called by the Territorial superintendent of district schools, for that purpose, decide what text books shall be adopted in the schools, and their use shall be exclusive and mandatory in all the district schools of the Territory: *Provided*, that no text book so adopted shall be changed within a period of five years from its adoption, except for sufficient cause. The county superintendents, with the trustees in their respective districts, shall regulate the school terms, allowing such holidays and vacations as may be advisable.

Duty of county superintendent.

(605.) SEC. 17. The county superintendent shall take the general supervision of the schools in his county, and visit them at least twice in each year, examine and audit the trustees' books, and see that the trustees are diligent in the discharge of their duties. He shall keep a correct account with the county treasurer and with the trustees of school districts, of all funds received and disbursed for school purposes in the county; shall audit all school accounts against the county treasurer, and draw his warrant in favor of the several school districts for the payment thereof. He shall transmit to the Territorial superintendent of district schools, on or before the first Monday in November annually, a full and complete financial statement of all funds received in his county, including amount of taxes collected by the trustees in each district, voluntary contributions, and amounts arising from the general government, or by legislative enactment of the Territory of Utah, or from any other source whatever; and amounts disbursed for buildings, furniture, and all school appurtenances, the actual tuition fees, together with a statistical statement in the following form:

COUNTY SUPERINTENDENT'S

Annual Report for ......Co., ending first Monday in Nov. ......, 18......, ...County Supt.

Form of report.

NAMES OF DISTRICTS.	No. of districts in county.	No. of districts reported.	No. of schools.	No. of male teachers.	No. of female teachers.	No. of boys in county between [the ages of] six and sixteen years.	No. of girls in county between [the ages of] six and sixteen years.	Total children between six and sixteen.	No. of male scholars enrolled.	No. of female scholars enrolled.	Total enrolled.	Percentage of names enrolled.	Average daily attendance.	Percentage of school population actually attending school.	Amount paid to male teachers.	Amount paid to female teachers.	Total paid to teachers.	No. of days schools have been taught during the year.	Present condition of school buildings.	Amount of building funds raised.	Amount of taxes appropriated to the use of schools.	Real value of school property.	REMARKS.

Duty of county superintendent in relation to school fund.

(606.) SEC. 18. The county superintendents of district schools are hereby authorized and required to proceed against all delinquent district poundkeepers, or other parties, who have failed or shall fail to pay the school funds due, or which may hereafter become due, arising from the sales of estrays or from other sources, and shall pay all amounts thus collected into the county treasury, quarterly.

School tax upon railroads to be reported to and collected by county collector, and paid to county treasurers.

(607.) SEC. 19. The annual school tax levied upon any railroad company in this Territory, shall be reported to the county collectors in the respective counties, and be by them collected at the same time, and in the same manner as prescribed for the collection of Territorial and county taxes, and the amount thereof shall be paid into the county treasury, to be drawn by the trustees, according to the school population of the several districts, upon the order of the county superintendent: *Provided,* such collectors shall receive for their services at the rate of three dollars per day for the time spent in collecting said tax.

To be drawn by trustees.

Appropriation for schools.

(608.) SEC. 20. That the sum of twenty-five thousand dollars annually is hereby appropriated for the use of schools in this Territory; twenty thousand annually of which shall be for the use of district schools to be drawn on the orders of the Territorial superintendent of district schools in favor of the treasurer of each county, according to the school population thereof, and shall be paid to the trustees, by the county treasurer, on the orders of the county superintendent, as provided in the preceding section; and said moneys shall be used by the trustees in paying school teachers, according to the average daily attendance of pupils; five thousand dollars annually to the University of Deseret, to be drawn by and expended under the direction of the chancellor and board of regents: *Provided,* that forty pupils annually shall be instructed free of charge, for tuition, books, or apparatus, for one year in the normal department of said university. Said pupils shall be selected by the Territorial superintendent of district schools from persons nominated by the county superintendents of the several counties, according to the district school population thereof, and his certificate shall entitle the holder to all the benefits of this provision. The character of the studies pursued by said pupils shall be such as may from time to time be advised by the Territorial superintendent of district schools. Each pupil so educated shall sign an obligation, to the Territorial superintendent of district schools, conditioned that for each year's free tuition so received he or she will serve one year as a district school teacher, if required so to do by their respective county superintendents.

How funds to be used.

How apportionment mentioned in the preceding section to be made.

(609.) SEC. 21. The county and district apportionment contemplated in the preceding section shall be made by the Territorial superintendent of district schools, based upon the annual reports of county superintendents during the first week in December in each year, according to the number of all the children in the districts between the ages of six and sixteen years, and forward a certificate to each county superintendent, setting forth the amount allotted to each county, and a copy of such certificate to the Territorial auditor, whose duty it shall be to issue a warrant to each county treasurer, on application therefor, setting forth the amount allotted to his county.

Construction of this act as to former assessments and contracts.

(610.) SEC. 22. Nothing in this act shall be so construed as to interfere with any assessment heretofore made or contract entered into by the parties under the former law, or suits pending that have originated under any former acts of this Legislature. Nor to appropriate any part of the school funds to any private, select, or high school, or any boarding school, or academy, or any school whatsoever not under the immediate control and direction of the school district trustees, excepting as provided in section twenty. Nor to prevent the present Territorial and county superintendents of common schools, from continuing in office until superseded by election as herein provided for.

In whom property vests.

(611.) SEC. 23. After the passage of this act all the school property acquired, both personal and real, of any school district shall be the property of such district for school purposes; and prior to the erection or construction of any school buildings on any lot or parcel of land (except on public domain) the school trustees shall first obtain from the owner of such lot or parcel of land a deed, in fee simple, by purchase or otherwise, the deed to run from the grantor to the school trustees of said school district, and their successors in office, as grantees, and shall record said deed in the proper office for recording deeds in that county.

TITLE XIII.

OF REAL PROPERTY.

CHAPTER I. Declaring certain things to be property and concerning conveyances.
CHAPTER II. Of the proof and acknowledgement of instruments in writing *affecting real estate.*

CHAPTER I.

DECLARING CERTAIN THINGS TO BE PROPERTY AND CONCERNING CONVEYANCES.

SECTION.

612. Persons enclosing unclaimed government lands or possessing improvements on the same, to be deemed lawful owners.
613. How transfers of land claims and improvements made.
614. Must be witnessed, acknowledged and recorded.
615. How other property disposed of by gift to be transferred.
616. Bodies corporate may transfer property by gift.
617. How and by whom lands conveyed.
618. Deed notice when recorded; but good between parties.
619. Deed when filed imparts notice.
620. When void as to subsequent purchaser.
621. Bond or agreement to sell, power of attorney, etc.
622. Revocation of power.
623. Evidence.
624. Evidence when original is lost.
625. Only prima facie.
626. When it must be established.
627. After acquired title inures to grantees of prior deed.
628. Party out of possession may convey.
629. Existing instruments on record import notice. But not to affect vested rights.
630. Copies as evidence.

An Act declaring certain things to be property, specifying the owner thereof, defining the mode for recovering its possession, and providing for redress of any grievances that may arise from proceedings under this act.

[*Approved January* 20, 1860.]

Persons enclosing unclaimed government land, or purchasing improvements on the same to be deemed lawful owners

(612.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That any person who has enclosed, or may hereafter enclose, a portion or portions of unclaimed government land, or caused it to be done at his expense; or has purchased, or may hereafter purchase, such enclosure; or erected, caused to be erected, or purchased any building or other improvement thereon, or may hereafter do so, is hereby declared to be the lawful owner of the claim to the possession of such inclosed land, and the lawful owner of the improvements thereon and thereunto appertaining; and he shall be so deemed and held in all legal proceedings, and in all rights and doings pertaining or relating to the aforesaid property.

SECS. 2 (1) and 3 (1).

An Act concerning transfer of land claims and other property.

[*Approved January* 18, 1855.]

How transfers of land claims and improvements made.

(613.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That the transfer of a land claim with the improvements thereon must be substantially in form as follows:....Be it known by these presents that........................of....................... ....the rightful claimant and owner of possession..... ....[here describe the property and its location, and, if required, any peculiar rights and appurtenances] do for the sum of..............dollars paid by ....of....................; or in consideration of................good will to................, (as the case may be) transfer all my claim to and ownership of the aforesaid property to the said...................... heirs and assigns. Dated this............day of........ in the year..............

Must be witnessed, acknowledged and recorded.

(614.) SEC. 2. To be valid, a transfer must be witnessed by two or more competent persons, be acknowledged before some person authorized to take acknowledgments; be recorded; and the record, page and book be certified thereon by the recorder in the county where the property is located.

How other property disposed of by gift to be transferred.

(615.) SEC. 3. Other property than land claims and the improvements thereon, when disposed of by gift, must be transferred substantially in the same manner, and by specification of kind and number or amount, but, unless required, the details may be omitted.

Bodies corporate may transfer property by gift.

(616.) SEC. 4. Any person or body corporate, legally authorized to purchase and dispose of property, may transfer to any other person or body corporate all rightful claim and ownership of property by gift, and such transfer is and shall be deemed valid and a bar to all claims whatever, except just liabilities incurred previous to the time of transfer.

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(1) Superseded by act of Feb. 16, 1872. See sec. (1196.)

An Act concerning conveyances.

[*Approved February* 20, 1874.]

How and by whom lands conveyed.

(617.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That conveyances of lands, or of any estate or interest therein, may be made by deed, signed by the person from whom the estate or interest is intended to pass, being of lawful age, or by his lawful agent or attorney, and by one or more credible witnesses, and acknowledged or proved, and recorded as provided in this act.

Deed notice when recorded.

But good between the parties.

(618.) SEC. 2. That every conveyance of real estate, and every instrument of writing, setting forth an agreement to convey any real estate, or whereby any real estate may be affected, proved, acknowledged and certified in the manner prescribed by this act, to operate as notice to third persons, shall be recorded in the office of the recorder of the county in which such real estate is situated, but shall be valid and binding between the parties thereto, without such record, and to all other persons who have had actual notice.

Deed when filed imparts notice.

(619.) SEC. 3. That every such conveyance or instrument of writing, acknowledged or proved, and certified and recorded in the manner prescribed by this act, and every patent to lands within this Territory, duly executed and verified according to law, and recorded as provided by this act, shall, from the time of filing the same with the recorder for record, impart notice to all persons of the contents thereof, and subsequent purchasers, mortgagees, and lien-holders shall be deemed to purchase and take with notice.

When void as to subsequent purchaser.

(620.) SEC. 4. That every conveyance of real estate within this Territory hereafter made, which shall not be recorded as provided in this act, shall be void as against any subsequent purchaser, in good faith and for a valuable consideration, of the same real estate, or any portion thereof, where his own conveyance shall be first duly recorded.

Bond or agreement to sell, power of attorney, &c.

(621.) SEC. 5. That every power of attorney, or other instrument in writing, containing the power to convey any real estate, as agent or attorney for the owner thereof, or to execute, as agent or attorney for another, any conveyance whereby any real estate is conveyed or may be affected, shall be acknowledged or proved, and certified and recorded as other conveyances whereby real estate is conveyed or affected are required to be acknowledged or proved and certified and recorded.

Revocation of power.

(622.) SEC. 6. That no such power of attorney or other instrument certified and recorded in the manner prescribed in the preceding section, shall be deemed to be revoked by any act of the party by whom it was executed until the instrument containing such revocation shall be deposited for record in the same office in which the instrument containing the power is recorded, or canceled of record as provided by law.

Evidence.

(623.) SEC. 7. That every conveyance or other instrument conveying or affecting real estate, which shall be acknowledged or proved and certified, as prescribed by law, may, together with the certificate of acknowledgment or proof, be read in evidence without further proof.

Evidence when original is lost, &c.

(624.) SEC. 8. That when any such conveyance or instrument is acknowledged or proved, certified and recorded in the manner prescribed by this act, and it shall be shown to the court that such conveyance or instrument is lost, or not within the control of the party wishing to use the same, the record thereof, or the transcript of such record, certified by the recorder under the seal of his office, may be read in evidence without further proof.

Only prima facie.

(625.) SEC. 9. That neither the certificate of the acknowledgment, nor of the proof of any such conveyance or instrument, nor the record nor the transcript of the record, of such conveyance or instrument, shall be conclusive, but the same may be rebutted.

When it must be established.

(626.) SEC. 10. That if the party contesting the proof of any such conveyance or other instrument, shall make it appear that any such proof was taken upon the oath of an incompetent witness, neither such conveyance nor instrument nor the record thereof, shall be received as evidence until established by other competent proof.

After acquired title inures to grantee of prior deed.

(627.) SEC. 11. That if any person shall hereafter convey any real estate by conveyance purporting to convey the same in fee simple absolute, and shall not at the time of such conveyance have the legal estate in such real estate, but shall afterwards acquire the same, the legal estate subsequently acquired shall immediately pass to the grantee, and such conveyance shall be as valid as if such legal estate had been in the grantor at the time of the conveyance.

Party out of possession may convey.

(628.) SEC. 12. That any person claiming title to any real estate may, notwithstanding there may be an adverse possession thereof, sell and convey his interest therein in the same manner and with the same effect as if he were in the actual possession thereof.

Existing instruments on record impart notice.

But not to affect vested rights.

(629.) SEC. 13. That all instruments of writing now copied into the books of record of the office of the county recorders of the several counties of this Territory, shall, after the passage of this act, be deemed to impart to subsequent purchasers and incumbrancers, and to all other persons whomsoever, notice of all deeds, mortgages, powers of attorney, contracts, conveyances, or other instruments, so far as, and to the extent that the same may be found recorded, copied or noted in the said books of record, notwithstanding any defect, omission or informality existing in the execution, acknowledgment, certificate of acknowledgment, recording, or certificate of recording the same: *Provided*, that nothing herein contained shall be construed to affect any rights heretofore acquired in the hands of subsequent grantees or assignees.

Copies as evidence.

(630.) SEC. 14. That duly certified copies of such instruments as are embraced in the preceding section of this act, may be read in evidence under the same circumstances and rules as are provided in this act for using copies of instruments duly executed and recorded.

CHAPTER II.

OF THE PROOF AND ACKNOWLEDGMENT OF INSTRUMENTS IN WRITING AFFECTING REAL ESTATE.

SECTION.
631. Proof or acknowledgment.
632. Proof or acknowledgment before whom made in this Territory; in any other State or Territory; in foreign countries; by deputy.
633. Officer to certify.
634. Party must be personally known or identified on oath.
635. What to show.
636. Form of certificate.
637. Same when grantor unknown.
638. Proof by whom made.
639. No proof unless witness personally known or proven.
640. What must be proven.
641. What certificate must show; form of certificate.
SECTION.
642. When no proof of handwriting taken.
643. No certificate to be granted unless, etc.
644. Subpœna for witnesses.
645. Penalty for disobedience. Proviso. Proof otherwise.
646. When entitled to be recorded.
647. Married women.
648. Discharge of mortgage or deed of trust.
649. On certificate.
650. How same recorded.
651. Definition.
652. Same.

Proof or acknowledgment.

(631.) SEC. 15. That every conveyance in writing whereby any real estate is conveyed or may be affected, shall be acknowledged, or proved and certified, in the manner hereinafter provided.

Same.

(632.) SEC. 16. That the proof or acknowledgment of every conveyance whereby any real estate is conveyed or may be affected, shall be taken by some one of the following officers.

In this Territory.

First—If acknowledged or proved within this Territory, by some judge or clerk of a court having a seal, or some notary public or county recorder, or by a justice of the peace of the county where the conveyance is executed and to be recorded. (1)

In any other State or Territory.

Second—If acknowledged or proved without this Territory, and within any State or Territory in the United States, by some judge or clerk of any court of the United States, or of any State or Territory having a seal, or by a notary public, or by a commissioner appointed by the governor of this Territory for that purpose.

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(1) See sec. (220.)

In foreign countries.

Third—If acknowledged or proved without the United States, by some judge or clerk of any court of any State, kingdom or empire having a seal, or any notary public therein, or any minister, commissioner or consul of the United States appointed to reside therein.

By deputy.

When any of the officers above mentioned are authorized by law to appoint a deputy, such acknowledgment or proof may be taken by any such deputy in the name of his principal.

Officer to certify.

(633.) SEC. 17. That every officer who shall take the proof or acknowledgment of any conveyance affecting any real estate, shall grant a certificate thereof, and cause such certificate to be endorsed or annexed to such conveyance, such certificate shall be:

First—When granted by any judge or clerk, under the hand of such judge or clerk, and the seal of the court.

Second—When granted by an officer who has a seal of office, under the hand and official seal of such officer.

Third—When granted by a justice of the peace, then under his hand.

Party must be personally known or identified on oath.

(634.) SEC. 18. That no acknowledgment of any conveyance whereby any real estate is conveyed, or may be affected, shall be taken unless the person offering to make such acknowledgment shall be personally known to the officer taking the same to be the person whose name is subscribed to such conveyance as a party thereto, or shall be proved to be such by the oath or affirmation of a credible witness.

What to show.

(635.) SEC. 19. That the certificate of such acknowledgment shall state the fact of acknowledgment, and that the person making the same was personally known to the officer granting the certificate to be the person whose name is subscribed to the conveyance as a party thereto, or was proved to be such by the oath or affirmation of a credible witness, whose name shall be inserted in the certificate.

Form of certificate.

(636.) SEC. 20. That such certificate shall be substantially in the following form, to wit:

TERRITORY OF UTAH, }
COUNTY OF———. }

On this — day of———, A. D. one thousand eight hundred and———, personally appeared before me, A. B., [a notary public, or judge, or other officer, as the case may be], in and for said county, C. D., personally known to me to be the person described in, and who executed the foregoing instrument, who acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

In witness whereof, &c.

(637.) SEC. 21. That when the grantor is unknown to the judge, or other officer taking the acknowledgement, the certificate shall be substantially in the following form, to wit: Same when grantor unknown.

TERRITORY OF UTAH, }
COUNTY OF———. }

On this — day of———, A. D. one thousand eight hundred and————, personally appeared before me, A. B., [a notary public or judge, or other officer as the case may be], in and for said county, C. D., satisfactorily proved to me to be the person described in, and who executed the within or annexed conveyance, by the oath of E. F., a competent and credible witness for that purpose, by me duly sworn, and he, the said C. D., acknowledged that he executed the same freely and voluntarily, for the uses and purposes therein mentioned.

(638.) SEC. 22. That the proof of the execution of any conveyance whereby any real estate is conveyed, or may be affected, shall be: Proof by whom made.

First—By the testimony of a subscribing witness; or,

Second—When all the subscribing witnesses are dead, or cannot be had by evidence of the handwriting of the party, or of the two subscribing witnesses, given by a credible witness to each signature.

(639.) SEC. 23. That no proof by a subscribing witness shall be taken unless such witness shall be personally known to the officer taking the proof, to be the person whose name is subscribed to the conveyance as a witness thereto, or shall be proved to be such by the oath or affirmation of a credible witness. No proof unless witness personally known or proven.

(640.) SEC. 24. That no certificate of such proof shall be granted, unless such subscribing witness shall prove that the person whose name is subscribed thereto as a party, is What must be proven.

the person described in, and who executed the same; that such person executed the conveyance, and that such person subscribed his name thereto as a witness thereof, at the request of the maker of such instrument.

Certificate must show.

(641.) SEC. 25. That the certificate of such proof shall set forth the following matters:

First—The fact that such subscribing witness was personally known to the officer granting the certificate, to be the person whose name is subscribed to such conveyance as a witness thereto, or was proved to be such by the oath or affirmation of a witness, whose name shall be inserted in the certificate.

Second—The proof given by such witness of the execution of such conveyance, and of the facts that the person whose name is subscribed to such conveyance as a party thereto, is the person who executed the same, and that such witness subscribed his name to such conveyance as a witness thereof. That such certificate shall be substantially in the following form, to wit:

Form of certificate.

TERRITORY OF UTAH, }
COUNTY OF———. }

On this — day of———, A. D. one thousand eight hundred and————, before me, A. B., [a notary public, judge or other officer as the case may be], in and for said county, personally appeared C. D., personally known to me, [or satisfactorily proved to me by the oath of E. F., a competent and credible witness for that purpose, by me duly sworn], to be the same person whose name is subscribed to the annexed instrument as a witness thereto, who, being by me duly sworn, deposes and says that he resides in———, county of———, and Territory of Utah; that he was present and saw G. H., personally known to him to be the same person described in, and who executed the annexed instrument as a party thereto, sign, seal and deliver the same, and heard him acknowledge that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned, and that he, the deponent, thereupon signed his name as a subscribing witness thereto, at the request of the said G. H.

In witness whereof, &c.

(642.) SEC. 26. That no proof by evidence of the handwriting of the party, or of the subscribing witnesses, shall be taken, unless the officer taking the same shall be satisfied that all the subscribing witnesses to such conveyance are dead, out of the jurisdiction, or cannot be had to prove the execution thereof. When no proof by hand-writing taken.

(643.) SEC. 27. That no certificate of any such proof shall be granted unless a competent and credible witness shall state on oath or affirmation, that he personally knew the person whose name is subscribed thereto as a party, well knew his signature (stating his means of knowledge), and believes the name of the person subscribed thereto as a party, was subscribed by such person; nor unless a competent and credible witness shall in like manner state that he personally knew the person whose name is subscribed to such conveyance as a witness, well knew his signature (stating his means of knowledge), and believes the name subscribed thereto as a witness was thereto subscribed by such person. No certificate to be granted unless, &c.

(644.) SEC. 28. That upon the application of any grantee, in any conveyance required by law to be recorded, or by any person claiming under such grantee, verified under the oath of the applicant, that any witness to such conveyance residing in the county where such application is made, refuses to appear and testify touching the execution thereof, and that such conveyance cannot be proved without his evidence, any officer authorized to take the acknowledgment or proof of such conveyance, may issue a *subpœna* requiring such witness to appear before such officer, and testify touching the execution thereof. Subpœna for witness.

(645.) SEC. 29. That every person, who, being served with a *subpœna*, shall, without reasonable cause, refuse, or neglect to appear, or, appearing, shall refuse to answer upon oath touching the matters aforesaid, shall be liable to the party injured for such damages as may be sustained by him on account of such neglect or refusal, and may also be committed to prison by the judge of some court of record, there to remain, without bail, until he shall submit to answer upon oath as aforesaid; but no person shall be required to attend who resides out of the county in which the proof is to be taken, nor unless his reasonable expenses shall have first been tendered to him: *Provided*, however, that if it shall appear to the satisfaction of the officer so authorized to take such acknowledgment, that such subscribing witness purposely conceals himself, or keeps out of the Penalty for disobedience. Proof otherwise.

way, so that he cannot be served with a *subpœna,* or taken on attachment, after the use of due diligence to that end, or in case of his continued failure or refusal to testify for the space of one hour after his appearance shall have been compelled by process, then said conveyance, or other instrument, may be proved and admitted to record in the same manner as if such subscribing witness thereto were dead.

When entitled to be recorded.

(646.) SEC. 30. That a certificate of the acknowledgment of any conveyance, or of the proof of the execution thereof, as provided in this act, signed by the officer taking the same, and under the seal of the officer, if he have one, shall entitle such conveyance, with the certificate or certificates as aforesaid to be recorded in the office of the recorder of the county in which the real estate is situated.

Married women.

(647.) SEC. 31. That a married woman may convey any of her real estate, or any interest therein, by conveyance thereof, executed and acknowledged and certified in the same manner as provided in this act for other persons.

Discharge of mortgage or deed of trust.

(648.) SEC. 32. Any mortgage or deed of trust to secure the payment of a sum of money that has been, or may hereafter be recorded, may be discharged by an entry in the margin of the record thereof, signed by the mortgagee or trustee, or his personal representative or assignee, stating the satisfaction of the mortgage or deed of trust, in the presence of the recorder or his deputy, who shall subscribe the same as a witness, and such entry shall have the same effect as a deed of release duly acknowledged and recorded.

On certificate.

(649.) SEC. 33. Any mortgage or deed of trust may also be discharged upon the record thereof, by the recorder in whose custody it shall be, whenever there shall be presented to him a certificate, executed by the mortgagee or trustee, his representative or assignee, acknowledged or proved and certified as hereinbefore prescribed to entitle conveyances to be recorded, specifying that such mortgage or deed of trust has been paid, or otherwise satisfied or discharged.

How same recorded.

(650.) SEC. 34. Every such certificate, and the proof of acknowledgment thereof, shall be recorded at full length, and a reference shall be made to the book containing such record in the minute of the discharge of such instrument, made by the recorder upon the record thereof.

Definition.

(651.) SEC. 35. That the term "real estate," as used in this act, shall be construed as co-extensive in meaning with land, tenements, hereditaments and mining and land claims.

(652.) SEC. 36. That the term "conveyance," as used in this act, shall be construed to embrace every instrument in writing by which any real estate, or interest in real estate, is created, aliened, mortgaged or assigned, except wills and leases for a term not exceeing one year. The term "seal" shall include a scroll. Same.

SEC. 37. This act shall be in force in thirty days from and after its passage.

TITLE XIV.

OF THE SETTLEMENT OF ESTATES OF DECEASED PERSONS.

CHAPTER I. Estates of deceased persons.
CHAPTER II. Of estates of decedents.
CHAPTER III. Of the procedure in probate courts.

CHAPTER I.

ESTATES OF DECEASED PERSONS.

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658. Wills to be recorded, may be read in evidence.
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668. Court may direct sale of property.
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670. Conveyance of real estate.
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673. Payments next to be made; creditor to give notice of claims.
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675. Distribution of shares.
676. Homestead not liable to any claim; children to have equal shares; further division of shares.
677. Inheritance of illegitimate children and their mothers.
678. Estates of deceased children may fall to parents.
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680. Estate of deceased wife falls to husband.
681. Executors to complete contracts.
682. Executors to render account to court once a year.
683. Discharge of executors.
684. Proceedings previous to this act.

An Act in relation to the estates of decedents. (1)

[*Approved March* 3, 1852.]

(653.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That any person of full age and sound mind, may dispose, by will, of all his property, except what is sufficient to pay his debts, or what is allowed as homestead or otherwise to wife or family; property subsequently acquired may also be devised. Wills.

(654.) SEC. 2. Personal property may be bequeathed by verbal will, if witnessed by two competent witnesses; all other wills to be valid must be in writing, witnessed by two competent witnesses, and signed by the testator, or by some person in his presence and by his express direction. Verbal wills. Witnesses to written wills.

(655.) SEC. 3. Posthumous children, unprovided for by the father's will, shall inherit the same interest as though no will had been made. Interest of posthumous children.

(656.) SEC. 4. Wills duly sealed up and endorsed may be deposited with the clerk of the probate court, whose duty it is to file, and safely preserve the same until the death of the testator or testators, unless they themselves sooner demand them.

(657.) SEC. 5. Any person having the custody of a will, shall, at the first stated term of the court, after being informed of the death of the testator, bring the same into court, where it shall be publicly read. Public reading of will.

(658.) SEC. 6. Wills, when proved and allowed, shall have a certificate thereof endorsed or annexed thereto; signed by the clerk, and attested by the seal of the court; all of which shall be recorded in a book to be kept for that purpose, and every will so certified, or record thereof, or a transcript of such record duly authenticated, may be read in evidence in all courts within this Territory, without further proof. Wills must be thus allowed and attested, to be carried into effect. Wills to be recorded. May be read in evidence.

(659.) SEC. 7. Executors are entitled to a copy of the will, and if there is no executor appointed in the will, or if he, or they shall fail to qualify and act, they may be appointed by the court. The court may also, for good cause, remove executors, as also fill vacancies. Executors.

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(1) The provisions of this act, which are in conflict with those in the next succeeding chapter, are repealed by the latter; but, as some are not repealed, and for the further reason, that, in the settlement of estates under this act for many years, it has become a rule of property and is, therefore, included in the present compilation.

Executors of non-residents.

(660.) SEC. 8. In the administration of the estate of any deceased non-resident, an executor may be appointed and qualify himself as required of other executors, unless another executor has previously been appointed in this Territory.

How administration shall be granted.

(661.) SEC. 9. Where no executor is appointed by will, administration shall be granted: first, to the wife of the deceased; second, to his next of kin; third, to his creditors; fourth, to any other person whom the court may select, and the court may unite individuals belonging to the same or different classes as executors, whenever it deems such a course expedient. The court must not appoint a person as executor who is manifestly unsuitable for the discharge ot the trust, nor who is a minor.

Executor's bond and oath.

(662.) SEC. 10. Every executor, before entering upon the discharge of his duties, must give bonds in such penalty and securities as the judge of the court approves, conditioned for the faithful discharge of his duties, and take and subscribe an oath to the same import, which oath and bond shall be filed in the probate court's office. New bonds and increased penalties, and new securities may be required whenever the court shall deem it necessary or expedient.

Special executors.

(663.) SEC. 11. The court, when there is necessary delay in granting a commission to any executor to act, may, in its discretion, appoint one or more special executors, to collect and preserve the property of the deceased, who shall qualify as above required. All executors shall make out and file an inventory of all the estate and effects, personal and real, belonging to such estate in the probate court's office within thirty days from the date of his commission. Upon granting full administration the powers of special executors shall cease, and all the business shall be transferred to the general executor.

Inventory.

Court may prescribe rules for winding up the affairs of the estate.

(664.) SEC. 12. Nothing herein shall be so construed, when the interest of creditors are not prejudiced thereby, as to hinder the testator or the court prescribing the manner of winding up the affairs of the estates, or continuing his business in which the deceased was engaged at the time of his death, in order to wind up his affairs with greater advantage to the interest of the estate.

Appraisement of property.

(665.) SEC. 13. All personal property of the deceased must be appraised by appraisers appointed by the court, and if any portion of such property be in another county, the same appraisers may serve, or others may be appointed by the court or by a disinterested justice of the peace of such county, and a supplemental inventory and appraisement must be made out whenever the existence of other property is discovered.

Property reserved for the benefit of family.

(666.) SEC. 14. When the deceased leaves a wife or family, no property exempt by law from execution, shall be considered assets, or administered upon, but shall be held for the exclusive benefit of the wife or family, and shall not be liable for any debts against the estate.

Property to be delivered to the executor.

Executor may compound with debtor.

(667.) SEC. 15. All persons having any of the property or effects of a deceased person in their hands wrongfully, are required to deliver them up to the executor of the estate. The executor, with the approbation of the court, may compound with any debtor of the estate who may be thought unable to pay his whole indebtedness, or in order to avoid doubtful litigation.

Court may direct sale of property.

(668.) SEC. 16. The court, on application of the executor, shall, from time to time, direct the sale of such portions of personal effects as are of a perishable nature, or which from any cause would otherwise be likely to depreciate in value, and also such portions as are necessary to pay off the debts and charges upon the estate. If the personal effects are found insufficient to satisfy such charges, a sufficient portion of real estate may be ordered to be sold for that purpose.

Public or private sale.

(669.) SEC. 17. Property may be sold either at public or private sale, as shall be most conducive to the interest of said estate, and reasonable and general notice of public sale must always previously be given.

Conveyance of real estate.

(670.) SEC. 18. When real estate is sold, conveyance of the interest of the decedent may be made by the executor under the approval of the court.

Sale on credit.

(671.) SEC. 19. Property may also be sold upon credit, not exceeding twelve months, whenever the court is satisfied that the interest of the estate will be promoted thereby.

Expenses of administration and other charges.

(672.) SEC. 20. As soon as the executors are possessed of sufficient means, over and above the expense of administration, they shall pay off the charges of the last sickness and funeral of the deceased.

Payments next to be made.

Creditor to give notice of claims.

(673.) SEC. 21. They shall, in the next place, pay any allowance which may be made by the court for the maintenance of a widow or minor children. Other demands against the estate are next payable; after which, legacies may be paid and distribution made to heirs by descent. A neglect or failure on the part of any creditor to give notice of his claim to the executor or the court, and not proving the same within two years from and after the granting of administration upon said estate, shall prove a bar to the filing of it ever after, unless the said claim is in litigation, or unless unavoidable circumstances entitle the claimant to equitable relief.

Dividend for the payment of creditors.

(674.) SEC. 22. If there are not likely to be sufficient means in all, to pay off the whole of the debts of any one class, the court shall, from time to time, strike a dividend of the means on hand among the creditors of that class, and the executor shall pay the several amounts accordingly.

Distribution of shares.

(675.) SEC. 23. The personal estate of the deceased, not necessary for the payment of debts not otherwise disposed of as herein provided, shall be distributed to the same persons and in the same proportions as though it were real estate. The distribution shares shall be paid over as fast as the executor can properly do so. The property itself shall be distributed in kind, whenever that can be done satisfactorily and equitably; in other cases the court may direct the property to be sold, and the proceeds to be distributed. When the circumstances of the family require it, the court, in addition to what is hereinbefore set apart for their use, may direct a partial distribution of the money or effects on hand at any time after filing the inventory, he being satisfied that said amount, so distributed, will eventually be coming to said family.

Homestead not liable to any claim.

(676.) SEC. 24. The homestead, occupied by the wife, or any portion of the family of the deceased at the time of his death, shall in all cases be held free to the use of the wife and family of the deceased, and shall not be liable to any claim or claims against said estate, and if there be other property remaining after the liabilities of the estate are liquidated, then it shall, in the absence of other arrangements by will, descend in equal shares to his children or their heirs; one share to such heirs through the mother of such children, if she shall survive him, during her natural life, or during her widowhood; or if he has had more than one wife, who either died or survived in lawful wedlock, it shall be equally divided between the living and the heirs of those who are dead, such heirs taken by right of representation.

Children to have equal shares.

Further division of shares.

Inheritance of illegitimate children and their mothers.

(677.) SEC. 25. Illegitimate children and their mothers inherit in like manner from the father, whether acknowledged by him or not, provided it shall be made to appear to the satisfaction of the court, that he was the father of such illegitimate child or children.

Estates of deceased children may fall to parents.

(678.) SEC. 26. The parents or parent, if only one be living, may inherit the estate of their children when they shall die without wife, or issue; but in all cases where the deceased leaves a wife, the inheritance shall not pass therefrom, so long as the name of the dead shall be perpetuated thereon.

Property given by way of advancement to an heir.

(679.) SEC. 27. Property given by an intestate by way of advancement to an heir shall be considered part of the estate, so far as regards the division and distribution thereof, and shall be taken by such heir towards his share of the estate at what it would at the time be worth if in the condition in which it was when given to him; but if such advancement exceeds the amount to which he would be entitled, he cannot be required to refund any portion thereof.

Estate of deceased wife falls to the husband.

(680.) SEC. 28. The husband shall inherit the estate of a deceased wife in the same manner as the wife the estate of the deceased husband, and the like interest shall in the same manner descend to their respective heirs.

Executors to complete contracts.

(681.) SEC. 29. Executors have power to complete the performance of contracts made by the intestate, either to receive or give conveyances to real estates upon the fulfillment of the terms of any contract previously so made.

Executors to render an account to the court once a year.

(682.) SEC. 30. Executors shall at least once a year, and oftener if required by the court, render his account to the court, showing the condition of the estate, its debts and effects ; he must account for all property mentioned ; but the appraisement shall be taken only as presumptive evidence of its value, neither shall the executor claim any benefit from the sale of property at a higher price than the appraisement; nor is he chargeable with any loss occasioned without any fault of his own.

Discharge of executors.

(683.) SEC. 31. Upon the final settlement by the executor, an order shall be entered, discharging him from further duties and responsibilities.

Proceedings previous to this act.

(684.) SEC. 32. Nothing herein contained shall be so construed as to hinder or delay any proceedings or orders, already made by any court having previous to this act had jurisdiction in the settlement of estates.

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An Act relating to the estates of decedents.

[*Approved February* 18, 1876.]

WILLS.

Who may make a will. (685.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That any person of the age of eighteen years and of sound mind may dispose of his or her property, personal and real, to which he or she may be in any manner entitled, whether in possession, or seized or not; and every devise purporting to convey all the real estate of the testator shall be construed to convey all the real estate both legal and equitable belonging to him or her at the time of his or her decease, whether in possession, reversion, or remainder, unless it shall clearly appear by his or her will that he or she intended otherwise, but all property of the devisor except that which is by law exempt from execution shall be liable for his or her debts.

Devise of all one's real estate covers that subsequently acquired.

(686.) Sec. 2. A will or codicil to be valid, and pass the estate of the devisor shall be in writing, subscribed by the testator, and attested by at least two witnesses, both of them subscribing in the presence of the testator and the presence of each other; all wills executed according to the laws of the State, Territory, or county [country], where they were executed may be admitted to probate in this Territory.

How executed.

(687.) Sec. 3. Every devise or bequest given in any will or codicil to a subscribing witness, or to the husband or wife of such subscribing witness, shall be void, unless such will or codicil be otherwise legally attested, and such person shall be admitted as a witness thereto in the same manner as if such devise or bequest had not been given.

Devise or legacy to subscribing witness void.

(688.) Sec. 4. When a devisee or legatee of the testator shall die before him, and no provision is made for such contingency, the issue of such devisee or legatee shall take the estate so devised or bequeathed.

Provision for descendants not to lapse.

(689.) Sec. 5. Any married woman may dispose of all her estate by will, and may alter or revoke the will in like manner as a person under no disability might do.

Married woman may make will.

(690.) Sec. 6. If the subscribing witnesses to a will are competent at the time of attesting its execution, their subsequent incompetency, from whatever cause it may arise, shall not prevent the probate and allowance of the will, if it be otherwise satisfactorily proved.

Competency of subscribing witnesses.

(691.) Sec. 7. A bond, covenant, or agreement made by a testator, to convey any property devised or bequeathed in any will previously made, shall not be deemed a revocation of such previous devise or bequest, but such property shall pass by the devise or bequest, subject to the same remedies on such bond, covenant, or agreement, for the specific performance or otherwise against the devisees or legatees as might be had by law against the heirs of the testator, if the same had descended to them.

Bond, covenant, agreement to convey property devised not a revocation.

Incumbrance to secure payment of money, etc., not a revocation.

(692.) SEC. 8. A charge or incumbrance upon any estate, for the purpose of securing the payment of money, or the performance of any covenant or agreement, shall not be deemed a revocation of any will relating to the same estate which was previously executed, but the devises and legacies therein contained shall pass subject to such charge or incumbrance.

After-born children unprovided for, to succeed.

(693.) SEC. 9. When any child shall have been born, after the making of its parent's will, and no provision shall have been made for him or her therein, such child shall have the same share in the estate of the testator, as if the testator had died intestate; and the share of such child shall be assigned as provided by law, in case of intestate estates, unless it shall be apparent from the will that it was the intention of the testator that no provision should be made for such child.

Children or issue of children of testator unprovided for by his will.

(694.) SEC. 10. When any testator shall omit to provide in his or her will for any of his or her children or for the issue of any deceased child, unless it shall appear that such omission was intentional, such child, or the issue of such child, shall have the same share in the estate of the testator as if he or she had died intestate, to be assigned as provided in the preceding section.

Share of after-born child, out of what part estate to be paid.

(695.) SEC. 11. When any share of the estate of a testator shall be assigned to a child born after the making of a will, or to a child or the issue of a child, omitted in the will, as hereinbefore mentioned, the same shall first be taken from the estate not disposed of by the will, if any; if that shall not be sufficient, so much as shall be necessary shall be taken from all the devisees and legatees, in proportion to the value they may respectively receive under the will, unless the obvious intention of the testator in relation to some specific devise, or bequest, or other provision in the will, would thereby be defeated; in such case, such specific devise, legacy, or provision may be exempted from such apportionment; and a different apportionment, consistent with the intention of the testator, may be adopted.

Advancement during lifetime of testator.

(696.) SEC. 12. If such child, or children, or their descendants, so unprovided for, shall have had an equal proportion of the testator's estate bestowed on them in the testator's lifetime, by way of advancement, they shall take nothing in virtue of the provisions of the three preceding sections.

Actual revotion.

(697.) SEC. 13. No will or codicil shall be revoked otherwise than by burning, canceling, or tearing it by the testator with the intent to destroy it, or by some person in his presence, by his direction; or by a later will or codicil, which manifestly is intended to revoke the former.

Time within which will must be proved.

(698.) SEC. 14. No will shall be proved after ten years from the death of the testator; but any minor or other person laboring under legal disability, interested in such will, shall be allowed two years after arriving at full age, or after such legal disability shall be removed to cause the will to be proved.

When estate of legatee or devisee taken for payment of debts, others to contribute.

(699.) SEC. 15. When any estate, bequeathed or devised to any person or persons, shall be taken for the payment of the testator's debts, all the other legatees, devisees, or heirs shall contribute their proportional share of such estate to the person from whom such legacy or devise shall be taken away, and he may maintain an action to compel such contribution.

SUCCESSION.

Succession defined.

(700.) SEC. 16. Succession is the coming in of another to take the property of one who dies without disposing of it by will.

Who first succeeds to possession of estates not devised, and for what purpose.

(701.) SEC. 17. The property, both real and personal, of one who dies without disposing of it by will, passes to the heirs of the intestate, subject to the control of the probate court, and to the possession of any administrator appointed by that court for the purposes of administration. When any person having title to any estate, real or personal, not otherwise limited, dies without disposing of it by will, it is succeeded to, and must be distributed, subject to the payment of the debts of the decedent, in the following manner.

Succession to and distribution of property.

(702.) SEC. 18. If the decedent at the time of the death, be a resident of this Territory, and the head of a family, the property, real and personal, then exempt from execution, shall pass to the surviving family in equal shares, and such property shall not be subject to the payment of the debts of the decedent, nor to any bequest, nor to the payment of any legacy.

Same.

(703.) SEC. 19. If the decedent leave a husband or a wife, and only one child, or the issue of only one child, the estate, except as provided above, passes one-third to the surviving husband or wife for life, the remainder and the other two-thirds to such child or the issue of such child by right of representation. If there be more than one child living, or one child and the issue of one or more deceased children living, the estate goes one-fourth to the surviving husband or wife for life, and the remainder, with the other three-fourths, to the surviving children and the issue of any deceased child by right of representation. If there be no child of the decedent living at the time of the death, and there be issue of any deceased child, the remainder goes to all the lineal descendants of the decedent and if all the descendants are in the same degree of kindred to the decedent, they share equally, otherwise they take by right of representation.

Same. (704.) Sec. 20. If the decedent leave a husband or a wife and a mother, and there be no issue, the estate goes in equal shares to the mother and the husband or wife. However, if the decedent leave an estate which comes to him from his father, and he be living, such estate goes in equal shares to the father and the husband or wife. And if there be no mother nor issue, and there be brothers and sisters of the decedent, then the other half of the estate goes to the brothers and sisters of the decedent in equal shares; if there be also issue of any deceased brother or sister of the decedent, then they take by right of representation; if the father of the decedent be then living, he takes the share of a brother or sister.

Same. (705.) Sec. 21. If the decedent leave no issue nor husband nor wife and the mother be living, the estate goes to the mother. However, if the decedent leave an estate which came to him as an advancement from his father, and he be living, such estate goes to the father.

Same. (706.) Sec. 22. If the decedent leave a mother, and there be no issue, and no husband or wife, or father, and no brother or sister, one-half of the estate goes to the mother and the other half to the issue of any deceased brother or sister.

Same. (707.) Sec. 23. If the decedent leave a father, and there be no issue and no husband or wife, or mother, and no brother, or sister, one-half of the estate goes to the father and the other half to the issue of any deceased brother or sister.

Same. (708.) Sec. 24. If the decedent leave a husband or wife, and no issue, and no father or mother, or brother or sister, the estate goes to the surviving husband or wife.

Same. (709.) Sec. 25. If the decedent leave brothers and sisters, or either, and there be no mother or father, and no husband or wife, or issue, the estate goes to the brothers and sisters in equal shares; if there be also any issue of any deceased brothers or sisters, they take by right of representation.

Same. (710.) SEC. 26. If the decedent leave no issue, nor husband, or wife, and no father, or mother, or brother or sister, the estate goes to the next of kin, in equal degree, excepting when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claim through the nearest ancestors must be preferred to those claiming through an ancestor more remote.

Same. (711.) SEC. 27. If the decedent leave several children, or one child, and the issue of one or more other children, and any such surviving child die under age without leaving a surviving husband, or wife, or issue, all the estate that came to the deceased child by inheritance from such decedent, descends in equal shares to the other children of the same parents, and to the issue of any such other children who are dead, by right of representation.

Same. (712.) SEC. 28. And if at the death of such child who dies under age without leaving a surviving husband, or wife, or issue, and all the other children of its parents are also dead, and any of them have left issue, the estate that came to such child by inheritance from its parent descends to the issue of all the other children of the same parent, and if all the issue are in the same degree of kindred to the child, they share the estate equally, otherwise they take according to the right of representation.

When estate escheats. (713.) SEC. 29. If the decedent leave no husband, wife, or kindred, the estate escheats to the Territory for the support of common schools. (1)

Illegitimate children to inherit in certain cases. (714.) SEC. 30. Every illegitimate child is, in all cases, an heir to its mother. It is also heir to its father when acknowledged by him.

The mother is successor to illegitimate child. (715.) SEC. 31. If an illegitimate child die intestate without leaving issue or husband or wife, its estate goes to its mother, or in case of her decease to her heirs at law.

Degrees of kindred how computed. (716.) SEC. 32. The degree of kindred is established by the number of generations, and each generation is called a degree.

Same. (717.) SEC. 33. The series of degrees forms the line; the series of degrees between persons who descend from one another is called direct or lineal consanguinity; and the series of degrees between persons who do not descend from one another, but spring from a common ancestor, is called the collateral line, or collateral consanguinity.

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(1) See sec. (982.)

Same. (718.) SEC. 34. The direct line is divided into a direct line descending and a direct line ascending. The first is that which connects the ancestor with those who descend from him. The second is that which connects a person with those from whom he descends.

Same. (719.) SEC. 35. In the direct line there are as many degrees as there are generations. Thus the son is, with regard to the father, in the first degree; the grandson in the second; and *vice versa* with regard to the father, and grandfather towards the sons and grandsons.

Same. (720.) SEC. 36. In the collateral line the degrees are counted by generations, from one of the relations up to the common ancestor, and from the common ancestor to the other relations. In such computation the decedent is excluded, the relative included, and the ancestor counted but once. Thus, brothers are related in the second degree; uncle and nephew in the third degree, cousins-german in the fourth, and so on.

Relation of the half blood. (721.) SEC. 37. Kindred of the half blood inherit equally with those of the whole blood in the same degree, unless the inheritance came to the intestate by descent, devise, or gift of some one of his ancestors, in which case all those who are not of the blood of such ancestor must be excluded from such inheritance.

Advancements constitute part of distributive share. (722.) SEC. 38. Any estate, real or personal, given by the decedent, in his lifetime, as an advancement to any child, or other lineal descendant or husband or wife, is a part of the estate of the decedent for the purposes of division and distribution thereof among his successors, and must be taken by such child, or other lineal descendant, or husband, or wife towards his share of the estate of the decedent.

Advancements, when too much, or not enough. (723.) SEC. 39. If the amount of such advancement exceeds the share of the successor receiving the same, he must be excluded from any further portion in the division and distribution of the estate, but he must not be required to refund any part of such advancement; and if the amount so received is less than his share, he is entitled to so much more as will give him his full share of the estate of the decedent.

(724.) SEC. 40. All gifts and grants are made as advancements, if expressed in the gift to be so made, or if the consideration expressed be love and affection, or if charged in writing by the decedent as an advancement, or acknowledged in writing as such, by the child or other successor or heir. What are advancements.

(725.) SEC. 41. If the value of the estate so advanced is expressed in the conveyance, or in the charge thereof made by the decedent, or in the acknowledgment of the party receiving it, it must be held as of that value, in the division and distribution of the estate; otherwise, it must be estimated according to its value when given, as nearly as the same can be ascertained. Value of advancements how determined.

(726.) SEC. 42. If any child or other lineal descendant, or husband or wife, receiving advancement, die before the decedent, leaving issue, the advancement must be taken into consideration in the division and distribution of the estate, and the amount thereof must be allowed accordingly, by the representatives of the heirs receiving the advancement, in like manner as if the advancement had been made directly to them. When heir advanced to dies before decedent.

(727.) SEC. 43. The provisions of the preceding sections as to the inheritance of the husband and wife from each other, apply only to the separate property of the decedents. Inheritance of husband and wife from each other.

(728.) SEC. 44. Inheritance or succession by "right of representation" takes place when the descendants of any deceased heir take the same share or right in the estate of another person that their parents would have taken if living. A posthumous child is considered as living at the death of its father. Inheritance by representation.

(729.) SEC. 45. Resident aliens may take descent in all cases by succession as citizens; and no person capable of succeeding under the provisions of this act is precluded from such succession by reason of alienage of any relative; but no non-resident foreigner can take by succession unless he appears and claims such succession within five years after the death of the decedent to whom he claims succession. Aliens may inherit, when and how.

(730.) SEC. 46. When succession is not claimed as provided in the preceding section, within five years, the probate court on information shall direct the prosecuting attorney, or sheriff of the county, to reduce the property to the possession of the Territory, or cause the same to be sold, and the proceeds thereof to be deposited in the Territorial Succession not claimed prosecuting attorney to cause to be sold, and proceeds deposited.

treasury for the benefit of such non-resident foreigner, or his legal representative, to be paid to him whenever, within five years after such deposit, proof to the satisfaction of the probate court and the auditor of public accounts is produced that he is entitled to succeed thereto.

When the property and estate escheat to Territory.

(731.) SEC. 47. When so claimed, a copy of the evidence and the order of the probate court must be filed by the auditor of public accounts as his voucher, and the property delivered, or the proceeds paid to the claimant, on filing his receipt therefor. If no one succeeds to the estate, or the proceeds, as herein provided, the property of the decedent devolves and escheats to the people of the Territory, and is placed by the auditor of public accounts to the credit of common schools. (1)

Property escheated subject to charges as other property.

(732.) SEC. 48. Real property passing to the Territory under the last section, whether held by the Territory or its officers, is subject to the same charges and trusts to which it would have been subject if it had passed by succession.

Repealing section.

(732*.) SEC. 49. So much of an act entitled "An act in relation to the estate of decedents," approved March 2, 1852, as is inconsistent with the provisions of this act, be and the same is hereby repealed. This act shall take effect and be in force from and after the thirty-first day of March, eighteen hundred and seventy-six.

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(1) See sec. (982.)

CHAPTER III.

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An Act regulating procedure in probate courts.

[*Approved February* 18, 1876.]

OF JURISDICTION.

Probate court to have jurisdiction as provided in this act.

(733.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That the probate courts of the respective counties of this Territory shall have jurisdiction of the estates of deceased persons in the manner provided for in and pursuant to this act.

When exercised.

(734.) SEC. 2. Wills shall be proved and letters testamentary, or of administration shall be granted:

First: In the county in which the deceased was a resident at, or immediately previous to his death, in whatever place his death may have happened.

Second: In the county in which he may have died leaving estate therein, and not being a resident of the Territory.

Third: In the county in which any part of his estate may be, he having died out of the Territory, and not having been a resident thereof at the time of his death.

Fourth: In the county in which any part of the estate may be, he not being a resident of the Territory and not having estate in the county in which he died.

Fifth: In all other cases in the county where application shall first be made; and in all cases the court once obtaining the same shall have exclusive jurisdiction of the settlement of the estate.

PROOF OF WILLS.

Custodian of will to deliver the same to whom.

(735.) SEC. 3. Any person having the custody of any will, shall, within thirty days after he shall have knowledge of the death of the testator, deliver it into the probate court which has jurisdiction of the case, or to the person named in the will as executor.

Executor must present will to probate court.

(736.) SEC. 4. Any person named as executor in any will, shall, within thirty days after the death of the testator, or within thirty days after he has knowledge that he is named executor, present the will, if in his possession, to the probate court which has jurisdiction.

Duty of executor.

(737.) SEC. 5. If he intends to decline the trust, he shall, at the same time, file his renunciation in writing. If he shall neglect for thirty days to file his renunciation, such neglect shall be equivalent to a renunciation, unless for cause shown, the probate court, or judge shall extend the time; if he intends to accept, he shall present with the will a petition, setting forth the facts necessary to give jurisdiction, and when the same is known to the petitioner, the names, ages, and residence, of the heirs and devisees of the deceased, and the probable value and the character of the property of the estate, and praying that the will be admitted to probate, and that letters testamentary be issued to him. If the jurisdictional facts existed, but are not fully set forth [in] the petition and the same shall be afterwards proved in the course of the administration, the probate of the will and the subsequent proceedings shall not, on account of such want of jurisdictional averments be held void.

Penalty for neglect.

(738.) SEC. 6. Every person who shall neglect to perform any duties required in the preceding sections, without reasonable cause, shall be liable to every person interested in the will for the damages they may sustain in consequence of such neglect.

(739.) SEC. 7. Any person named as executor in a will, Executor not having will in possession may present petition.

though the will is not in his possession, may present his petition to the probate court which has jurisdiction, praying that the person in possession of the will may be required to produce it, that it may be admitted to probate, and that letters testamentary may be issued to him.

Any person in interest may petition.

(740.) SEC. 8. Any person having an interest in the will may in like manner present a petition praying that it may be required to be produced, and admitted to probate.

Third person may be ordered to produce will.

(741.) SEC. 9. If it be alleged in any petition that any will is in the possession of a third person, and the court shall be satisfied that the allegation is correct, an order shall be issued and served upon the person having possession of the will, requiring him to produce it at a time to be named in the order.

Penalty on refusal.

(742.) SEC. 10. If he has possession of the will, and neglects or refuses to produce it in obedience to the order, he may, by warrant from the court, be committed to the jail of the county, and be kept in close confinement until he shall produce the will.

Probate court may issue orders for production of will.

(743.) SEC. 11. Applications for the probate of a will and for the issuance of letters, may be made to the probate court or judge and he may issue all necessary orders and writs to enforce the production of any will. He may also appoint a time for the hearing of any such application.

Court to appoint time for proving will.

(744.) SEC. 12. When any will shall have come into the possession of the probate court and a petition for the probate thereof and for the issuance of letters testamentary, or letters of administration, with the will annexed, shall have been filed, the court, or judge, shall appoint a time for proving it, which shall not be less than ten, nor more than thirty days, and shall cause notice to be given thereof by the clerk, by publication in some newspaper, if there is one printed in the county, if not, by notices posted in three public places in the county.

Upon whom citation to be served.

(745.) SEC. 13. If the heirs of the testator reside in the county, the court shall also direct citations to be issued and served upon them to appear and contest the probate of the will at the time appointed.

Same.

(746.) SEC. 14. If the will is presented by any other person than the one named as executor, or if it is presented by one of several persons named as executors in the will, citations shall also be issued and served upon such person or persons, if resident within the county.

(747.) SEC. 15. The court may also direct *subpœnas* to be issued to the subscribing or other witnesses to the will, if they reside in the county.

May direct subpœnas to be issued.

When testimony to be heard.

(748.) Sec. 16. At the time appointed, or at any time to which the hearing may be continued, upon proof being made by affidavit or otherwise to the satisfaction of the court that proper notice has been given, the court shall proceed to hear the testimony in proof of the will.

Who may contest.

(749.) Sec. 17. Any person interested may appear and contest the will, and if it appear that there are minors, or persons residing out of the county, who are interested in the estate, and no one appears for them, the court may appoint some discreet person to represent them.

Probate, when no contest.

(750.) Sec. 18. If no person shall appear to contest the probate of the will, the court may admit it to probate on the testimony of one of the subscribing witnesses only, if he shall testify that the will was executed, in all particulars, as required by law, and that the testator was of sound mind at the time of the execution.

Contestant to file grounds of contest.

(751.) Sec. 19. If any person appear and contests the will, he shall file a statement in writing of the grounds of his opposition. Whereupon the court shall proceed to admit such will to probate or not according to the facts found and the law.

Witnesses, who and how many to be examined.

(752.) Sec. 20. If the will is contested, all the subscribing witnesses who are present in the county, and who are of sound mind, must be produced and examined, and the death, absence, or insanity of any of them shall be satisfactorily proved to the court.

Proof of handwriting admitted, when.

(753.) Sec. 21. If none of the subscribing witnesses reside in the county at the time to prove the sanity of the testator, and the execution of the will; and as evidence of the execution, it may admit proof of the handwriting of the testator, and of the subscribing witnesses, or any of them.

Testimony reduced to writing for future evidence.

(754.) Sec. 22. The testimony of each witness shall be reduced to writing, and signed by him, and shall be deemed good evidence in any subsequent contest concerning the validity of the will, or the sufficiency of the proof thereof, if the witness be dead or has permanently left the Territory.

If proved, certificate to be attached.

(755.) Sec. 23. If the court shall be satisfied upon the proof taken, that the will was duly executed, and that the testator, at the time of its execution, was of sound and disposing mind, and not under restraint, undue influence, or fraudulent misrepresentation, the will shall be allowed; a certificate of the proof and the facts found, signed by the probate judge, and attested with the seal of the court, shall be attached to the will.

Will and proof to be filed and recorded.

(756.) SEC. 24. The will and certificate of the proof thereof, and the testimony which has been taken, shall be filed by the clerk and recorded by him in a book kept for that purpose.

What received in evidence.

(757.) SEC. 25. The record of the will, and the exemplification by the clerk, in whose custody it may be, shall be received in evidence.

Wills proved in States and other Territories to be recorded.

(758.) SEC. 26. All wills which shall have been duly proved and allowed in any State or Territory, or foreign country, may be allowed and recorded in the probate court of any county in which the testator shall have left property.

Proceedings on the production of a foreign will.

(759.) SEC. 27. When a copy of such a will, and the probate thereof duly authenticated, shall be produced by the executor, or by any person to whom letters of administration with the will annexed might be granted, with a petition for letters, the same shall be filed in court, and the court or judge shall appoint a time for the hearing, and notice shall be given in the same manner as in the case of an original will for probate.

When copy admitted to probate.

(760.) SEC. 28. If on the hearing it shall appear to the court that the instrument ought to be allowed as the will of the deceased, the authenticated copy shall be admitted to probate, and recorded the same as in the case of other wills, and such copy or will shall have the same force and effect as if it had been originally proved and allowed in the same court. It shall be sufficient if it shall appear from the copies referred to in the preceding section that the will was executed, proved, and allowed, in conformity with the laws of the State, Territory, or foreign country where the same was probated and allowed; the copy of the order, decree, judgment, or certificate of the court or officer having jurisdiction of the subject matter, duly authenticated, showing the will to have been proved and allowed, shall be *prima facie* evidence, and also *prima facie* evidence of the death of the testator; but nothing herein shall be construed as to exclude any other legal evidence.

The probate may be contested within one year.

(761.) SEC. 29. When a will has been admitted to probate, any person interested may at any time, within one year after such probate, contest the same, or the validity of the will. For that purpose he shall file in the court before which the will was proved, a petition in writing, containing his allegation against the validity of the will, or against the sufficiency of the proof, and praying that the probate may be revoked.

Citation to be issued to parties interested.

(762.) SEC. 30. Upon the filing of the petition, a citation shall be issued to the executors, who have taken upon them the execution of the will, or to the administrators, with the will annexed, and to all the legatees named in the will, residing in the Territory, or to their guardians if any of them are minors, or their personal representatives if any of them are dead, requiring them to appear before the court on some day therein specified, to show cause why the probate of the will should not be revoked.

The hearing had on proof of service.

(763.) SEC. 31. At the time appointed for showing cause, or at any time to which the hearing shall be continued, personal service of the citations having been made upon any person named therein, the court shall proceed to hear the proofs of the parties. If any devisees or legatees named in the will shall be minors, and have no guardians, the court shall appoint some attorney or discreet person to represent them.

When probate to be annulled and revoked.

(764.) SEC. 32. If, upon the hearing of the proofs of the parties, the court shall decide that the will is for any reason invalid, or that it is not sufficiently proved to have been the last will of the testator, the probate shall be annulled and revoked.

Effect of revocation.

(765.) SEC. 33. Upon the revocation being made, the powers of the executor or administrator with the will annexed, shall cease; but such executor or administrator shall not be liable for any act done in good faith previous to the revocation.

Cost and expenses by whom paid.

(766.) SEC. 34. The fees and expenses shall be paid by the party contesting the validity of the will, or the probate, if the will, or probate, be confirmed. If the probate be revoked, the party who shall have resisted the revocation shall pay the costs and the expenses of the proceedings, or the same shall be paid out of the property of the deceased, as the court shall direct.

Probate when conclusive.

(767.) SEC. 35. If no person shall, within one year after the probate, contest the same, or the validity of a will, the probate of the will shall be conclusive; saving, to infants, married women, and persons of unsound mind, a like period of one year after their respective disabilities are removed.

Proof of lost or destroyed will to be taken.

(768.) SEC. 36. Whenever any will shall be lost or destroyed by accident or design, the probate court shall have power to take proof of the execution and validity of the will, and to establish the same notice to all persons interested, having been first given, as prescribed in regard to proofs of wills in other cases. All the testimony given shall be reduced to writing, and signed by the witnesses.

Must have been in existence at time of death.

(769.) SEC. 37. No will shall be allowed to be proved as a lost or destroyed will, unless the same shall be proved to have been in existence at the time of the death of the testator, or be shown to have been fraudulently destroyed in the lifetime of the testator, nor unless its provisions be clearly and distinctly proved by at least two credible witnesses.

To be certified, recorded and letters granted.

(770.) SEC. 38. When any will shall be established, the provisions thereof shall be distinctly stated and certified by the probate judge, under his hand and the seal of his court; and the certificate, together with the testimony upon which it is founded, shall be recorded as other wills are required to be recorded, and letters testamentary or of administration, with the wills annexed, shall be issued thereon in the same manner as upon wills produced and duly proved.

During pendency of application court may restrain.

(771.) SEC. 39. If, before or during the pendency of an application to prove a lost or destroyed will, letters of administration be granted on the estate of the testator, or letters testamentary of any previous will of the testator be granted, the court shall have authority to restrain the administrators or executors so appointed from any acts or proceedings which would be injurious to the legatees or devisees claiming under the lost or destroyed will.

LETTERS TESTAMENTARY AND OF ADMINISTRATION, AND BONDS OF EXECUTORS AND ADMINISTRATORS.

To whom letters shall issue.

(772.) SEC. 40. When any will shall have been proved and allowed, the probate court shall issue letters thereon to the persons named in the will as executors, who are competent to discharge the trust, and who shall appear and qualify.

Who are incompetent as administrators and executors.

(773.) SEC. 41. No person shall be deemed competent to serve as executor who at the time of the will is proved shall be,

1—Under age of majority; or,

2—Who, upon proof, shall be adjudged by the court incompetent to execute the duties of the trust by reason of drunkenness, improvidence, or want of understanding, or integrity. If any such person be named as the sole executor in any will, or if all the persons named as executors are incompetent, or shall renounce their claim thereto or fail, to apply for letters, or to appear and qualify, letters of administration, with the will annexed, shall be issued.

(774.) SEC. 42. Any person interested in a will, may file objections in writing, to the granting of letters testamentary to the persons named as executors, or any of them, and the objections shall be heard and determined by the court; a petition may also be filed for the issuance of letters of administration with the will annexed. Interested parties may file objections.

(775.) SEC. 43. When an unmarried woman, who shall have been appointed executrix, shall marry, her marriage shall extinguish her authority; when a married woman is nominated as executrix, she may be appointed and serve in every respect as if she were a *feme sole.* Unmarried women executrix, marrying authority to cease.

(776.) SEC. 44. No executor of an executor shall, as such, be authorized to administer on the estate of the first testator, but on the death of the sole or surviving executor of any last will, letters of administration, with the will annexed, of the estate of the first testator, left unadministered shall be issued. Executor of an executor.

(777.) SEC. 45. When a person under the age of twenty-one years shall be named executor, letters of administration, with the will annexed, shall be granted during the minority of the executor, unless there is another executor, who shall accept the trust and qualify, in which case the executor who shall accept the trust and qualify shall have letters testamentary, and shall administer the estate until the minor shall arrive at full age, when he may be admitted as joint executor. If minor named as executor, to whom letters granted during minority.

(778.) SEC. 46. When all the executors named shall not be appointed by the court, such as are appointed shall have the same authority to perform every act, and discharge every trust, required by the will, and their acts shall be as effectual for every purpose as if all were appointed and should act together; where there are two executors, or administrators, the act of one alone shall be effectual, if the other is absent from the Territory, or for any cause is laboring under any legal disability from serving, or if he should have given his co-executor, or co-administrator, authority under seal, to act alone, or for both; and where there are more than two executors, or administrators, the act of a majority shall be sufficient. Acts of a portion of executors valid.

(779.) SEC. 47. Administrators with the will annexed, Authority of administrators.

shall have the same authority as the executor named in the will would have had, and their acts shall be as effectual for every purpose.

Letters how issued.

(780.) SEC. 48. Letters testamentary and of administration, with the will annexed, shall be signed by the clerk and be under the seal of the court.

Form of.

(781.) SEC. 49. Letters testamentary may be in substantially the following form: Territory of Utah, county of . The last will of , deceased, a copy of which is hereto annexed having been proved and recorded in the Probate Court of the County of , who is named therein, is hereby appointed executor. Witness, clerk of the Probate Court of the County of , with the seal of the court affixed, the day of , A. D. 18 (seal). By order of the court Clerk.

Same.

(782.) SEC. 50. Letters of administration, with the will annexed, may be substantially in the following form: Territory of Utah, County of , The last will of , deceased, a copy of which is hereto annexed, having been approved and recorded in the Probate Court of the county of , and there be no executor named in the will (or as the case may be), is hereby appointed administrator, with the will annexed, Witness, clerk of the Probate Court of the County of , with the seal of the court affixed, the day of A. D. (seal). By order of the court, Clerk.

INTESTATES.

Order of persons entitled to administer.

(783.) SEC. 51. When any person owning property in this Territory shall die intestate, the court of probate that has jurisdiction, shall grant letters of administration of his or her estate, in the following order:

First—To the surviving husband or wife;

Second—to the children;

Third—To the father or mother;

Fourth—To the brothers;

Fifth—To the sisters;

Sixth—Any other of the next of kin who would be entitled to share in the distribution of the estate;

Seventh—The creditors;

Eighth—Any person whom the court deems competent to act.

(784.) SEC. 52. When there are several persons equally entitled to the administration, the court may in its discretion, grant letters to one or more of them; and when a creditor is claiming letters, the court may, in its discretion, at the request of another creditor, grant letters to another person legally competent. **Discretion of court to appoint administrator.**

(785.) SEC. 53. No person shall be entitled to letters of administration: **Persons incompetent to administer.**

First—Under the age of majority;

Second—Who, upon proof, shall be adjudged by the court incompetent to execute the trust by reason of drunkenness, improvidence, or want of integrity or understanding.

(786.) SEC. 54. When any unmarried woman, having been appointed administratrix, shall marry, her marriage shall extinguish her authority. **When marriage extinguishes authority.**

(787.) SEC. 55. Application for letters of administration shall be made by petition, signed and verified by the applicant or his or her counsel, and filed with the clerk of the court; the petition must state facts sufficient to give the court jurisdiction of the case; and the applicant must state so far as is known to him, the names, ages, and places of residence of the heirs of deceased, and an approximate value of the property. **Application how made.**

(788.) SEC. 56. When any petition praying for letters of administration has been filed, the clerk shall give notice thereof, by causing notices to be posted in at least three public places in the county, one of which shall be posted where the court is held. The notice shall state the name of the deceased, the name of the applicant, and the time the application will be heard. Such notice shall be given at least ten days before the hearing. **Notice of application.**

(789.) SEC. 57. Any person interested may contest the application, by filing written objections thereto, on the ground of the incompetency of the applicant, or may assert his own right to the administration, and pray that letters be issued to himself, after proper petition filed and due notice given. **Contesting application.**

(790.) SEC. 58. On the hearing, it being first proved that notice has been given according to law, the court shall proceed to hear the allegations and proof of the parties, and to order the issuance of letters of administration as the case may require. **Hearing of application.**

(791.) SEC. 59. An entry in the minutes of the court, **Evidence, notice of.**

that proof was made, that notice had been given, according to law, shall be conclusive evidence of the fact of such notice.

Granted to any applicant.

(792.) SEC. 60. Letters of administration may be granted to any applicant, though it appears that there are other persons having better rights to the administration, when such persons fail to appear and claim the issuance of letters to themselves.

What proof necessary before granting letters.

(793.) SEC. 61. Before letters of administration shall be granted on the estate of any person who is represented to have died intestate, the fact of his dying intestate shall be proved by the testimony of the applicant, or the court may examine any other person concerning the time, place, and manner of the death, the place of his residence at the time of his death, the value and character of his property, and whether or not the deceased left any will, and may compel any person to attend as a witness for that purpose.

Letters may be granted to others than those entitled.

(794.) SEC. 62. Administration may be granted to one or more competent persons, although not entitled to the same, at the request of the person entitled; the request shall be in writing, and shall be filed in the court.

Revocation of letters.

(795.) SEC. 63. When letters of administration have been granted to any other person than the surviving husband or wife, child, father, mother, or brother of the intestate, any one of them may obtain the revocation of the letters by presenting to the probate court a petition praying the revocation, and that letters of administration be issued to him or her.

Citation to be issued.

(796.) SEC. 64. When any such petition is filed the clerk shall issue a citation to the administrator to appear and answer the petition on some day that may be appointed by the court or judge.

Hearing of petition for revocation.

(797.) SEC. 65. At the time appointed, the citation having been duly served and returned, the court shall proceed to hear the allegations and proofs of the parties; and if the right of the applicant is established, and he or she be competent, letters of administration shall be granted to the applicant, and the letters of the former administrator be revoked.

Form of.

(798.) SEC. 66. Letters of administration shall be signed by the clerk, and be under the seal of the court, and may be in substantially the following form: Territory of Utah, County of , is hereby appointed administrator of the estate of , deceased. (Seal) Witness clerk of the probate court of the county of , with the seal of the court, affixed the day of , A. D. 18 , by order of the court, Clerk.

Administrator or executor to take oath.

(799.) SEC. 67. Before letters testamentary or of administration shall be issued to the executor or administrator, he shall take and subscribe an oath or affirmation before the probate judge, clerk, or other officer authorized to administer oaths, that he will perform, according to law, the duties of executor or administrator, and such oath or affirmation shall be attached to the letters. All letters testamentary and of administration issued to and all bonds executed by executors or administrators, with the amended certificates thereon, as provided for in this act, shall be forthwith recorded by the clerk of the court having jurisdiction of the estates, respectively, in a book to be kept by him in his office for that purpose; and the said records, and duly certified copies taken therefrom, shall have the same force and effect in all cases whatsoever as the original papers would have.

Letters and bond to be recorded.

Bond of administrators.

(800.) SEC. 68. Every person to whom letters testamentary or of administration shall have been directed to issue, shall, before receiving the letters, execute a bond to the Territory of Utah, with two or more sufficient sureties, to be approved by the probate judge. The penalty shall not be less than twice the value of the personal property and twice the probable value of the annual rents, profits, and issues of the real property belonging to the estate, which values shall be ascertained by the probate judge, by the examination on oath of the party applying, and of any other person he may think proper to examine. The bond shall be conditioned that the executor or administrator shall faithfully execute the duties of the trust according to law.

Form and requirements.

Separate bonds.

(801.) SEC. 69. When two or more persons shall be appointed executors or administrators, the probate judge shall take a separate bond from each of them.

Bonds and justification on.

(802.) SEC. 70. In all cases where bonds are required by this act, the sureties must justify on oath, before some officer authorized to administer oaths, to the effect that they are householders or freeholders, residents within this Territory, and worth the amount justified to over and above their debts and liabilities, exclusive of property exempt from execution. Such justification shall be in writing, signed by the person justifying, and certified to by the officer who takes the same, and attached to and filed with the bond. Whenever the penal sum of the bond amounts to more than two thousand dollars, the sureties may be allowed to become liable for portions of said penal sum, making in the aggregate, the whole penal sum of the bond; but for each of said portions of said penal sum there shall be at least two sufficient sureties, who shall be jointly and severally bound therefor with the principal.

When bond may be dispensed with.

(803.) SEC. 71. When it is expressly provided in the will of a testator that no bond shall be required of the executors, letters testamentary may issue and sales of real estate be made and confirmed without any bond having been given; but an executor to whom letters have been issued without bond may at any time afterward, whenever it may be shown from any cause to be necessary or proper, be required to appear and file a bond, as in other cases.

Petition showing failing sureties, asking further bonds.

(804.) SEC. 72. Whenever any person interested in any estate shall discover that the sureties of any executor or administrator have become or are becoming insolvent, that they have removed or are about to remove from the Territory, or that from any other cause, the bond is insufficient, he may apply, by petition, to the probate court or judge, and require that further security be given.

Citation to executor, etc.

(805.) SEC. 73. If the probate court or judge shall be satisfied that the matter requires investigation, a citation shall be issued to the executor or administrator, requiring him to appear, at a time and place to be therein specified, to show cause why he should not give further security. The citation shall be served personally on the executor or administrator, at least five days before the return day. If he shall have absconded, or cannot be found, it may be served by leaving a copy of it at his usual place of residence in the county.

Further security may be ordered.

(806.) SEC. 74. On the return of the citation, or at such other time as the judge shall appoint, he shall proceed to hear the proofs and allegations of the parties. If it shall satisfactorily appear that the security is, from any cause, insufficient, he may make an order requiring the executor or administrator to give further security, or to file a new bond in the usual form, within a reasonable time not exceeding five days.

Neglecting to obey order.

(807.) SEC. 75. If the executor or administrator neglect to comply with the order, within the time prescribed, the judge shall, by order, revoke his letters, and his authority shall thereupon cease.

(808.) Sec. 76. When a petition is presented, praying that an executor or administrator be required to give further security, and when it shall also be alleged, on oath or affirmation, that the executor or administrator is wasting the property of the estate, the court or judge may, by order, suspend his powers until the matter can be heard and determined.

Suspending powers of executor, etc.

(809.) Sec. 77. When it shall come to his knowledge that the bond of any executor or administrator is from any cause, insufficient, it shall be the duty of the probate court or judge, without any application, to cause him to be cited to appear and show cause why he should not give further security, and to proceed thereon, as upon the application of any person interested.

Further security ordered, without application, when.

(810.) Sec. 78. When either, or all, of the sureties of any executor, or administrator, shall desire to be released from responsibility, on account of his future acts, they may make application to the probate court, or judge, for relief, and the court, or judge, shall cause a citation to the executor, or administrator, to be issued, requiring him to appear at a time and place, to be therein specified, and to give other security, which citation shall be served personally. If he has absconded, or if he has left, or removed, from the Territory, or if he cannot be found, after due diligence and inquiry, service may be made by leaving a copy at his last place of residence, if the same can be ascertained, and by such publication as the court, or probate judge, may order.

Release of sureties.

(811.) Sec. 79. If new sureties be given to the satisfaction of the judge, he may, thereupon, make an order that the surety or sureties who applied for relief shall not be liable, on their bond, for any subsequent act, default, or misconduct of the executor or administrator.

New sureties.

(812.) Sec. 80. If the executor, or administrator, neglect, or refuse, to give new sureties, to the satisfaction of the judge, on the return of the citation, or within such reasonable time as the judge shall allow, not exceeding five days, unless the surety, or sureties, making the application, shall consent to a longer extension of time, the court, or judge, shall by order revoke the letters granted.

Neglect to give new sureties, forfeits letters.

(813.) Sec. 81. When there shall be a delay in granting letters testamentary or of administration, from any cause, or when such letters shall have been granted irregularly, or not sufficient bond shall have been filed as required by law, or when no application shall have been made for

Special administrator, when appointed.

such letters, the probate judge shall appoint a special administrator to collect and take charge of the estate of the deceased, in whatever county or counties the same may be found, and to exercise such other powers as may be necessary for the preservation of the estate.

When appointment made without notice.

(814.) SEC. 82. The appointment may be made without notice, and shall be made, by entry, upon the minutes of the court, which shall specify the powers to be exercised by the administrator. Upon such order being entered, and after the person appointed has given bond, the clerk shall issue letters of administration to such person, in conformity with the order.

Preference given.

(815.) SEC. 83. In making the appointment of a special administrator, the probate judge shall give preference to the person or persons entitled to letters testamentary, or of administration. But no appeal shall be allowed from the appointment.

To give bond and take oath.

(816.) SEC. 84. Before any letters shall issue to any special administrator, he shall give bond in such sum as the probate judge may direct, with sureties, to the satisfaction of said judge, conditioned for the faithful performance of his duties.

Duties of special administrator.

(817.) SEC. 85. The special administrator shall collect and preserve for the executor, or administrator, all the goods, chattels, debts, and effects of the deceased, all incomes, rents, issues, and profits, claims, and demands of the estate, shall take the charge and management of, enter upon and preserve from damage, waste, and injury, the real estate, and for any such and all necessary purposes, may commence and maintain, or defend, suits and other legal proceedings, as an administrator; he may sell such perishable property as the probate court may order to be sold, and may exercise such other powers as may be conferred upon him by his appointment, but in no case shall he be liable to an action by any creditor on a claim against the deceased.

When powers of special administrator cease.

(818.) SEC. 86. When letters testamentary, or of administration, on the estate of the deceased have been granted, the powers of the special administrator shall cease, and he shall forthwith deliver to the executor or administrator all the property and effects of the deceased in his hands; and the executor or administrator may be permitted to prosecute to final judgment any suit commenced by the special administrator.

Account to be rendered.

(819.) SEC. 87. The special administrator shall also render an account on oath, of his proceedings, in like manner as other administrators are required to do.

Special administrator to be appointed on death of administrator.

(820.) Sec. 88. Whenever an executor or administrator shall die, or his letters be revoked, and the circumstances of the estate require the immediate appointment of an administrator, the probate judge may appoint a special administrator, as provided in the preceding sections.

Remaining executor to continue, when colleagues are disqualified.

(821.) Sec. 89. In case any one of the several executors or administrators, to whom letters shall have been granted, shall die, become lunatic, be convicted of an infamous offense, or otherwise become incapable of executing the trust, or in case the letters, testamentary or of administration, shall be revoked or annulled, according to law, in respect to any one executor or administrator, the remaining executor or administrator shall proceed and complete the execution of the will or administration.

Who to act when all acting are incompetent.

(822.) Sec. 90. If all such executors or administrators shall die or become incapable or the power and the authority of all of them shall be revoked according to law, the probate court shall issue letters of administration with the will annexed, or otherwise, to the widow or next of kin, or others, in the same manner as is directed in relation to original letters of administration. The administrators so appointed shall give bond in the like penalty, with like sureties and conditions as hereinbefore required of administrators, and shall have like power and authority.

Letters to be revoked on proof of discovered will.

(823.) Sec. 91. If after granting letters of administration on the ground of intestacy, a will of the deceased shall be duly proved and allowed by the court, the letters of administration shall be revoked and the power of the administrators shall cease, and he shall render an account of his administration within such time as the court shall direct.

Power of executor in such a case.

(824.) Sec. 92. In such case the executor of the will, or the administrator with the will annexed, shall be entitled to demand, sue for, and collect, all the rights, goods, chattels and effects of the deceased remaining unadministered, and may be admitted to prosecute to final judgment any suit commenced by the administrator before the revocation of his letters of administration.

Executor or administrator may resign, when.

(825.) Sec 93. Any executor or administrator may, at any time, by writing, filed in the probate court, resign his appointment, having first settled his accounts and delivered up all the estate to such person as the court shall appoint: *Provided*, if, by reason of any delays in such settlement and delivering up of the estate, or for any other cause, the circumstances of the estate, or the rights of those interested in the estate shall, in the opinion of the court, require it, the court may, at any time before such settlement of accounts and delivering up of the estate shall have been completed, revoke the powers or the letters testamentary or of administration of such executor or administrator, and appoint, in his stead, an administrator, either special or general, as the case may require, and in the same manner as is directed in relation to original letters of administration. The liability of the outgoing executor or administrator, or of the sureties on his bond, shall not be in any manner discharged, released, or affected by such appointment of a special or general administrator in his stead.

All acts of executor, etc., valid until his power is revoked.

(826.) SEC. 94. All acts of an executor or administrator, as such, before the revocation of his letters testamentary, or of administration, shall be as valid to all intents and purposes, as if such executor or administrator had continued lawfully to execute the duties of his trust.

Transcript of court minutes to be evidence.

(827.) SEC. 95. A transcript from the minutes of the court showing the appointment of any person as executor or administrator, together with the certificate of the clerk under his hand, and the seal of his court, that such person has given bond and been qualified, and that letters testamentary or of administration, have been issued to him, and have not been revoked, shall have the same effect in evidence as the letters themselves.

When judge not to act.

(828.) SEC. 96. No probate court shall admit to probate any will or grant letters testamentary or of administration in any case where the judge of such court shall be interested as next of kin to the deceased, or as a legatee or devisee under the will, or when he shall be named as executor or trustee in the will, or shall have drafted the same or shall be in any manner interested or disqualified from acting.

Judge being disqualified, proceedings to be transferred, and where.

(829.) SEC. 97. When the probate court of any county shall be precluded from admitting to probate a will, or granting letters testamentary or of administration, from any of the causes mentioned in the preceding section, the will may be proved, and letters testamentary or of administration may be granted, and all proceedings necessary thereto or consequent thereon may be had in the probate court of an adjoining county, and the probate judge or probate court of such adjoining county shall be vested with as full and complete power, authority, and jurisdiction in the premises as would pertain to them if the testator or intestate had been a resident of such adjoining county at the time of his death, and shall retain jurisdiction in all subsequent proceedings in relation to the estate.

OF THE INVENTORY AND COLLECTION OF THE EFFECTS OF DECEASED PERSONS.

Inventory to be returned.

(830.) SEC. 98. Every executor or administrator shall make and return to the court within thirty days after his appointment, unless otherwise ordered by the court, a true inventory of all the estate of the deceased, which shall have come to his possession or knowledge.

Appraisement and pay of appraisers.

(831.) SEC. 99. For the purpose of making the appraisement, the probate judge, or court, shall appoint three disinterested persons, any two of whom may act, and who shall be entitled to receive a reasonable compensation for their services, to be allowed by the court, or judge; their compensation, as allowed, shall be in the form of a bill of items of their services, including all necessary disbursements, which shall be sworn to by them, and filed with the inventory, and which shall not exceed three dollars per day. If only one day's services are charged, the bill need not be sworn to. If any part of the estate shall be in any other county than that in which letters issued, appraisers thereof may be appointed, either by the probate judge having jurisdiction of the case, or by the probate judge of such county.

Oath of appraisers; inventory how made.

(832.) SEC. 100. Before proceeding to the execution of their duty, the appraisers, before any officer authorized to administer oaths, shall take and subscribe an oath, to be attached to the inventory, that they will truly, honestly, and impartially, appraise the property which shall be exhibited to them, according to the best of their knowledge and ability; they shall then proceed to estimate and appraise the property; each article shall be set down separately, with the value thereof, in dollars and cents, in figures, opposite to the articles, respectively; the inventory shall contain all the estate of the deceased, real and personal, a statement of all debts, partnerships, and other interests, bonds, mortgages, notes, and other securities, for the payment of money belonging to the deceased, specifying the name of the debtor in each security, the date, the sum originally payable, the endorsements thereon, if any, with their dates, the sum which, in the judgment of the appraiser, may be collected on each debt, interest, or security; the inventory shall show, so far as the same can be ascertained by the executor, or the administrator, what portion of the property is community property, and what portion is the separate property of the deceased.

Inventory to account for money.

(833.) SEC. 101. The inventory shall also contain an account of all moneys belonging to the deceased which shall have come to the hands of the executor or administrator, and if none shall have come to his hands, the fact shall be so stated in the inventory.

Effect of naming debtor executor.

(834.) SEC. 102. The naming any person executor in a will shall not operate as a discharge from any just claim which the testator had against the executor, but the claim shall be included in the inventory, and the executor shall be liable for the same as for so much money in his hands at the time the debt or demand becomes due.

Discharge of bequest or debt against executor.

(835.) SEC. 103. The discharge or bequest in a will of any debt or demand of the testator, against any executor named in his will, or against any other person, shall not be valid against the creditors of the deceased, but shall be construed only as a specific bequest of such debt or demand; and the amount thereof shall be included in the inventory, and shall, if necessary, be applied in the payment of his debts. If not necessary for that purpose, it shall be paid in the same manner and proportion as the other specific legacies.

To make oath to inventory.

(836.) SEC. 104. The inventory shall be signed by the appraisers, and the executor, or administrator, shall take and subscribe an oath before the probate judge, or the clerk of the court, or any officer authorized to administer oaths, that the inventory contains a true statement of all the estate of the deceased which has come to his knowledge and possession, and particularly of all money belonging to the deceased, and of all just claims of the deceased against the executor or administrator. The oath shall be endorsed upon, or annexed to, the inventory.

Letters may be revoked for neglect.

(837.) SEC. 105. If any executor, or administrator, shall neglect, or refuse to return the inventory within [the] time prescribed, or within such further time, not exceeding two months, as the court, or judge, shall, for reasonable cause, allow, the court may, with or without notice, revoke the letters testamentary, or of administration, and the executor or administrator shall be liable on his bond for any injury sustained by the estate by his neglect.

(838.) SEC. 106. Whenever property not mentioned in any inventory that shall have been made shall come to the possession or knowledge of an executor or administrator, he shall cause the same to be appraised in the manner prescribed in this chapter [act], and an inventory to be returned within two months after the discovery thereof, and the making of such inventory may be enforced after notice by attachment or removal from office.

Inventory of after discovered property.

(839.) SEC. 107. The executor or administrator shall have a right, pursuant to an order from the probate court, to the possession of all the real, as well as personal estate of the deceased, except what is by law exempt from execution, and may receive the rents and profits of the real estate, until the estate shall be settled, or until delivered over by order of the probate court to the heirs or devisees, and shall keep in good tenantable repair all houses, buildings, and fixtures thereon, which are under his control.

Administrator and executor to possess real and personal estate.

(840.) SEC. 108. The personal estate of the deceased, which shall come into the hands of the executor or administrator, shall be first chargeable with the payment of the debts and expenses, and if the goods, chattels, rights, and credits in the hands of the executor or administrator, shall not be sufficient to pay the debts of deceased, and the expenses of administration and the allowances to the family of the deceased, the whole of the real estate may be sold for that purpose by the executor or administrator, in the manner prescribed by this act.

Personal estate first chargeable with payment of debts.

(841.) SEC. 109. If any person, before the granting of letters testamentary or of administration, shall embezzle or alienate any of the moneys, goods, chattels, or effects of any deceased person, he shall stand chargeable and be liable to the action of the executor or administrator of the estate, for double the value of the property so embezzled or alienated, to be recovered for the benefit of the estate.

Embezzling estate before granting letters.

(842.) SEC. 110. If any executor or administrator, heir, legatee, creditor, or other person interested in the estate of any deceased person, shall complain to the probate judge, on oath, that any person is suspected to have concealed, embezzled, smuggled, conveyed away, or disposed of any moneys, goods, or chattels of the deceased, or that he has in his possession, or knowledge, any deeds, conveyances, lands, contracts, or other writings, which contain evidences of, or tend to disclose, the right, title, interest, or claim of the deceased to any real or personal estate, or any claim

Citation to persons suspected of embezzlement, etc.

or demand, or any last will of the deceased, the said judge may cite such person to appear before the probate court, and may examine him on oath upon the matter of such complaint. If such person be not in the county where letters have been granted, he may be cited and examined either before the probate court of the county where he may be found, or before the court issuing the order or citation. But if in the latter case he appear, and be found innocent, his necessary expenses shall be allowed him out of the estate.

Refusal to obey citation, penalty.

(843.) SEC. 111. If the person so cited, refuse to appear and submit to such examination, or to answer such interrogatories as may be put to him, or her, touching the matters of such complaint, the court may, by warrant for that purpose, commit him, or her, to the county jail, there to remain in close custody until he, or she, submit to the order of the court, or be discharged according to law; and if, upon such examination it shall appear that such person has concealed, embezzled, smuggled, conveyed away or disposed of, any moneys, goods, or chattels, of the deceased, or that he has in his possession, or knowledge, any deeds, conveyances, bonds, contracts, or other writings, which contain evidences of, or tend to disclose, the right, title, interest, or claim, of the deceased to any real, or personal estate, claim, or demand, or any lost will of the deceased, the probate court may make an order requiring such person to disclose his knowledge thereof to said administrator, and may commit said person to the county jail, there to remain until said order is complied with, or be discharged, according to law; and all such interrogatories and answers shall be in writing, and shall be signed by the party examined, and filed in the probate court. The order for such disclosure, made upon such examination, shall be *prima facie* evidence of the right of such administrator to such property in any action that may be brought for the recovery thereof; and any judgment recovered therein, shall be for double the value of the property as assessed by the court, or jury, or for return of the property and damages, in addition thereto, equal to the value of such property. In addition to the examination of the party, witnesses may be produced and examined on either side.

May be compelled to disclose by imprisonment.

Who may be cited to account.

(844.) SEC. 112. The probate court or judge, upon the complaint, on oath, of any executor or administrator, may cite any person who shall have been entrusted with any part of the estate of the deceased person, to appear before such court, and may require such person to render a full account on oath, of any moneys, goods, chattels, bonds, accounts, or other papers belonging to the estate, which shall have come to his possession in trust for the executor or administrator, and of his proceedings thereon; and if the person so cited shall refuse to appear and answer such account, the court may proceed against him as provided in the preceding section.

OF THE PROVISION FOR THE SUPPORT OF THE FAMILY.

Widow and minor children may remain in decedent's house:

(845.) SEC. 113. When a person shall die, leaving a widow or minor child or children, the widow, child or children, shall, until letters shall have been granted, and the inventory shall have been returned be entitled to remain in possession of the homestead and all the furniture and wearing apparel of the deceased, and shall also be entitled to a reasonable provision for their support, to be allowed by the probate court or judge.

All property exempt from execution to be set apart for use of family.

(846.) SEC. 114. Upon the return of the inventory, or at any subsequent time during the administration, the probate court, or the judge thereof, may, of his own motion, or on application set apart for the use of the family of the deceased all of the real and personal property which is by law exempt from execution. If the homestead occupied by the family is not owned by the deceased, the widow or minor children shall be entitled to the value of a homestead that would be exempt by law from the real or personal estate of such deceased to be settled [selected] by the widow, or if there be no widow, to be set apart by the probate court or judge.

May make extra allowance.

(847.) SEC. 115. If the amount set apart be insufficient for the support of the widow, or child, or children, the probate court or judge shall make such reasonable allowance out of the estate as shall be necessary for the maintenance of the family, according to their circumstances, during the progress of the settlement of the estate, which, in case of an insolvent estate, shall not be longer than one year after granting letters of administration.

Payment of allowance.

(848.) SEC. 116. Any allowance made by the court or judge in accordance with the provisions of this act shall be paid by the administrator in preference to all other charges, except funeral charges and expenses of administration; and any such allowance, whenever made, may, in the discretion of the court or judge, take effect from the death of the testator or intestate.

Property set apart, how apportioned between widow and children.

(849.) SEC. 117. When property shall have been set apart for the use of the family in accordance with the provisions of this act, the same shall pass to such surviving family in equal shares: *Provided*, the portion inherited by the widow shall, upon her death, pass to the heirs of the deceased husband.

Estate less than ten hundred dollars to go to wife and children.

(850.) SEC. 118. If, on the return of the inventory of any intestate estate, it shall appear that the value of the whole estate does not exceed the sum of ten hundred dollars, the probate court, by a decree for that purpose, shall assign for the use and support of the widow and minor child, or children, if there be no widow, the whole of the estate, after the payment of the funeral charges and expenses of the administration, and there shall be no further proceedings in the administration, unless farther estate be discovered; and when it shall appear that the value of the whole estate does not exceed the sum of fifteen hundred dollars, it shall be in the discretion of the probate court to dispense with the regular proceedings, or any part thereof, prescribed in this act for the purpose of a summary administration of the estate, and to order distribution of the estate at the end of six months, after the issuance of letters: *Provided*, that notice to creditors shall have been given to present their claims within four months after the first publication of such notice.

Less than $1500 to be summarily administered.

When all property to go to children.

(851.) SEC. 119. If the widow has a maintenance derived from her own property equal to the portion set apart to her by 114 and 117 sections of this act, the whole property so set apart shall go to the minor children of deceased.

OF CLAIMS AGAINST THE ESTATE.

Notice to creditors.

(852.) SEC. 120. Every executor or administrator, shall, immediately after his appointment, cause to be published in some newspaper published in the county, if there be one, if not, then in such newspaper as may be designated by the court, a notice to the creditors of the deceased, requiring all persons having claims against the deceased, to exhibit them, with the necessary vouchers, within ten months after the first publication of the notice, to such executor or administrator, at the place of his residence or transaction of business, to be specified in the notice; such notice shall be published as often as the judge or court shall direct, but not less than once a week for four weeks; the court or judge may also direct additional notice by publication or posting. In case such executor or administrator resign or be removed, before the expiration of the ten months after the first publication of such notice, his successor shall give such notice only for the unexpiring portion of the ten months.

Copy and proof filed when order made.

(853.) SEC. 121. After the notice shall have been given as required by the preceding section, a copy thereof with the affidavit, or affidavits, of due publication, or of publication and posting may be filed, and upon such affidavit, or affidavits, or upon other testimony to the satisfaction of the court, a decree shall be made showing that due and legal notice to creditors has been given, and directing that such decree be entered in the minutes of the court.

Time within which claims must be presented.

(854.) SEC. 122. If a claim be not presented within ten months after the first publication of the notice, it shall be barred forever: *Provided*, if it be not then due, or if it be contingent, it may be presented within ten months after it shall become due or absolute: *And, provided further*, that, when it shall be made to appear by the affidavit of the claimant to the satisfaction of the executor or administrator and the probate judge, that the claimant had no notice as provided in this act, by reason of being out of the Territory, it may be presented any time before a decree of distribution is entered.

Claims to be sworn to.

(855.) SEC. 123. Every claim presented to the administrator shall be supported by the affidavit of the claimant that the amount is justly due, that no payments have been made thereon, and there are no offsets to the same, to the knowledge of the claimant, or other affiant: *Provided*, that when the affidavit is made by any other person than the claimant, he shall set forth in the affidavit the reasons it is not made by the claimant. The oath may be taken before any officer authorized to administer oaths. The executor, or administrator, may also require satisfactory vouchers, or proofs, to be produced in support of the claim; the amount of interest shall be computed, and included in the statement of the claim, and the rate of interest determined. In case the estate is insolvent, no claim, contracted after the passage of this act, shall bear any interest from and after the time of issuing letters.

When allowed to bear interest.

Allowance and rejection of claims.

(856.) SEC. 124. When a claim accompanied by the affidavit required in the preceding section, has been presented to the executor, or administrator, he shall endorse thereon his allowance or rejection, with the day and date thereof; if he allow the claim it shall be presented to the probate judge for his approval, who shall, in the same manner, endorse upon it his allowance, or rejection. If the executor, or administrator, or the judge, refuse, or neglect, to endorse such allowance, or rejection, for ten days after the claim shall have been presented to him, such refusal, or neglect, may be deemed equivalent to a rejection; and if the presentation be made by a notary, the certificate of such notary, under seal, shall be *prima facie* evidence of such presentment and rejection; if the claim be presented to the executor, or administrator, before the expiration of the time limited for the presentation of claims, the same may be held valid, though acted upon by the executor, or administrator, and by the judge, after the expiration of such time.

Approved claims or copies to be filed.

(857.) SEC. 125. Every claim which has been allowed by the executor, or administrator, and approved by the probate court, shall, within thirty days thereafter, be filed in the probate court, and be ranked among the acknowledged debts of the estate, to be paid in due course of administration. If the claim be founded on a bond, bill, note, or other instrument, the original instrument shall be presented, and the allowance and approval, or rejection, shall be endorsed thereon, or be attached thereto; if the claim, or any part thereof, be secured by a mortgage, or other lien, such mortgage, or other evidence of lien, shall be attached to the claim and filed therewith, unless the same is recorded in the office of the recorder of the county in which the land lies, in which case, it shall be sufficient to describe the mortgage, or lien, and refer to the date, volume, and page of its record; and in all cases it shall be permitted to the claimant to withdraw his claim from file, on leaving a certified copy, with a receipt endorsed thereon by himself or his agent. A brief description of every claim filed shall be entered, by the clerk, in the register, showing the name of the claimant, the amount and character of the claim, rate of interest, and the date of approval: *Provided*, if such original instrument be lost, or destroyed, then in lieu thereof, the claimant shall be required to file his affidavit, particularly describing such instrument, and stating the loss, or destruction, thereof; upon which affidavit the endorsement hereinbefore mentioned shall be made.

Lost instrument may be described.

(858.) SEC. 126. When a claim is rejected either by the executor, or administrator, or the probate judge, the holder shall bring suit in the proper court against the executor, or administrator, within three months after the date of its rejection, if it be then due, or within three months after it becomes due, otherwise the claim shall be forever barred.

Rejected claims to be sued in three months.

(859.) SEC. 127. No claim shall be allowed by the executor, or administrator, or by the probate judge, which is barred by the statute of limitations. When the claim shall be presented to the probate judge for his allowance, he may, in his discretion, examine the claimant and other persons on oath touching the validity of the claim, and may hear any other legal evidence in relation thereto.

Claims barred not to be allowed.

(860.) SEC. 128. No holder of any claim against an estate shall maintain any action thereon, unless the claim shall have been first presented to the executor, or administrator.

Claims must be presented before suit.

(861.) SEC. 129. The time during which there shall be a vacancy in the administration shall not be included in any limitations herein prescribed.

Time of limitation.

(862.) SEC. 130. If any action be pending against the testator or intestate, at the time of his death, the plaintiff shall in like manner present his claim to the executor, or administrator, for allowance or rejection, authenticated as required in other cases, and no recovery shall be had in the action, unless proof be made of the presentments.

Claims in action pending at the time of decease.

(863.) SEC. 131. Whenever any claim shall be presented to any executor, or administrator, or to the probate judge, and he shall be willing to allow the same in part, he shall state in his endorsement the amount he is willing to allow. If the creditor refuse to accept the amount allowed in satisfaction of his claim, he shall recover no costs in any action which he may bring against the executor, or administrator, unless he shall recover a greater amount than that offered to be allowed.

Allowance of claim in part.

(864.) SEC. 132. The effect of any judgment rendered against any executor or administrator, upon any claim for money against the estate of his testator or intestate, shall be only to establish the claim in the same manner as if it had been allowed by the executor or administrator and the probate judge, and the judgment shall be that the executor or administrator pay in due course of administration the amount ascertained to be due. A certified transcript of the judgment shall be filed in the probate court. No execution shall issue upon such judgment, nor shall it create any lien

Effect of judgment against executor.

upon the property of the estate or give to the judgment creditor any priority of payment.

Execution not to issue after death.

(865.) SEC. 133. When any judgment has been rendered against the testator, or intestate, in his life, no execution shall issue thereon after his death; but a certified copy of such judgment shall be presented to the executor or administrator, and be allowed and filed, or rejected, as any other claim, but need not be supported by the affidavit of the claimant, and if justly due and unsatisfied shall be paid in due course of administration: *Provided*, however, that if the execution shall have been actually levied upon any property of the deceased, the same may be sold for the satisfaction thereof, and the officer making the sale shall account to the executor or administrator, for any surplus in his hands. The executor, or administrator, may, however, require the affidavit of the claimant, or other satisfactory proof, that the judgment, or any portion thereof, is justly due and unsatisfied. (1)

If one is levied property may be sold.

May refer doubtful claims.

(866.) SEC. 134. If the executor, or administrator, doubt the correctness of any claim presented to him, he may enter into an agreement, in writing, with the claimant, to refer the matter in controversy to some disinterested person to be approved by the probate judge. Upon filing the agreement and approval of the probate judge, in the office of the clerk of the court for the county in which the letters testamentary, or of administration, were granted, the clerk shall enter a minute of the order referring the matter in controversy to the person so selected; and the report of the referee, if confirmed, shall establish, or reject, the claim, the same as if it had been allowed, or rejected, by the executor, or administrator, and the probate judge.

Claims of executor, etc., against the estate.

(867.) SEC. 135. If the executor or administrator is himself a creditor of the testator or intestate, his claim duly authenticated by affidavits, shall be presented for allowance or rejection to the probate judge, and its allowance by the judge shall be sufficient evidence of its correctness.

Neglect to give notice cause of removal.

(868.) SEC. 136. If any executor or administrator shall neglect for two months after his appointment to give notice to creditors, as prescribed by this chapter [act], it shall be the duty of the court to revoke his letters.

Executor to return statement of claims.

(869.) SEC. 137. At the same time at which he is required to return his inventory, the executor or administrator shall also return a statement of all claims against the estate which shall have been presented to him when required by the court, and from time to time thereafter shall present a statement of claims subsequently presented to him. In all such statements he shall designate the names of the creditors, the nature of each claim, when it became due or will become due, and whether it was allowed or rejected by him.

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(1) See sec. (1440.)

SALES OF PROPERTY BY EXECUTORS OR ADMINISTRATORS.

No sales valid except by order of court.

(870.) SEC. 138. No sale of any property of an estate of a deceased person shall be valid, unless made under order of the probate court, except as otherwise provided in this act.

Application for orders of sale.

(871.) SEC. 139. All applications for orders of sale shall be by petition in writing in which shall be set forth the facts showing the sale to be necessary, and upon the hearing any person interested in the estate, may file his written objections, which shall be heard and determined.

Perishable property to be sold.

(872.) SEC. 140. At any time after receiving letters the executor, or administrator, or special administrator, may apply to the court, or judge, for an order to sell the perishable property of the estate, and so much other property as may be necessary to be sold, to pay the allowance made to the family of the deceased; if there be a delay in obtaining such order, such property may be sold without an order of sale: *Provided,* that the executor, or administrator, or special administrator, shall be held responsible for such property, unless, after making a sworn return, and on a proper showing, the court shall approve such sale. If claims against the estate have been allowed, and a sale of property shall be necessary for their payment, or of the expenses of the administration, the executor, or administrator, may also apply for an order to sell so much of the personal property as shall be necessary. Upon filing his petition, notice of at least five days shall be given of the hearing of the application, either by posting notices, or by advertising; he may also make a similar application, from time to time, so long as any personal property remains in his hands, and a sale thereof is necessary, and if he deem it for the best interest of the estate, he may, at any time after the filing of the inventory, make an application, in like manner, and after giving like notice, for an order to sell the whole of the personal property belonging to the estate.

(873.) SEC. 141. If it appears that a sale is necessary, Order of sale, what to direct.

or for the best interest of the estate, the court or judge, shall order it to be made; in making such sales, the court, or judge shall order such articles as are not necessary for the support and subsistence of the family of the deceased, or are not specially bequeathed, to be first sold; articles so bequeathed shall not be sold until the residue of the personal estate has been applied to the payment of the debts.

What to be first sold.

How sale made.

(874.) SEC. 142. The sale of personal property shall be made at public auction, and after public notice, given for at least ten days, unless for good reason shown, the probate court, or judge, shall order a private sale, or a shorter notice; but no private sale shall be effectual for any purpose till the same shall be approved by the probate judge; public sales of such property shall be made at the residence of the deceased, or at the county court house door, or at some other suitable place, to be mentioned in the notice, as may be ordered by the court, and no sale shall be made of any property which is not present at the time of selling.

How notice given.

(875.) SEC. 143. The notice shall be given by notices posted in three public places in the county, or by publication in a newspaper, if the judge shall so order, in which shall be specified the time and place of sale.

When to sell real estate.

(876.) SEC. 144. When the personal estate in the hands of the executor or administrator, shall be insufficient to pay the allowance of the family, the debts that may be outstanding against the deceased, and the debts, expenses, and charges of the administration, the executor or administrator, may sell the real estate for that purpose upon the order of the probate court.

Verified petition for sale, what to contain.

(877.) SEC. 145. To obtain such order he shall present a petition to the probate court, or to the judge, setting forth the amount of personal estate that has come to his hands, and how much thereof, if any, remains undisposed of, the debts outstanding against the deceased, as far as can be ascertained, or estimated, the amount due upon the family allowance, or that will be due after the same shall have been in force for one year, the debts, expenses, and charges of the administration already accrued, and an estimate of what will, or may accrue during the administration, a description of all the real estate of which the testator, or intestate, died, seized, or in which he had any interest, or in which the intestate has acquired any interest, and the condition and value of the respective portions and lots, and whether the same be community, or separate, property, the names and ages of the devisees, if any, and of the heirs of the deceased, which petition shall be verified by the oath of the party presenting the same; if the inventory and appraisement on file contain a full description of the personal estate of the deceased, and of all the real estate of which the testator or intestate, died, seized, or in which he had any interest, or in which the estate has acquired any interest, such inventory, by a proper reference, may be made a part of the petition for a description of the personal estate, or real estate, or both, and if the same be full as to all property, except property subsequently discovered, or subsequently received, such reference may be had to the inventory, and the additional property may be set forth in the petition; if all the matters above enumerated cannot be ascertained, the same shall be stated in the petition.

Order to persons interested to appear.

(878.) SEC. 146. If it shall appear to the court, or judge, by such petition, that it is necessary to sell the whole, or some portion, of the real estate, such petition shall be filed, and an order shall thereupon be made, directing all persons interested in the estate to appear before the court at a time and place specified, not less than ten, nor more than twenty days from the time of making such order, to show cause why an order should not be granted to the administrator, to sell so much of the real estate of the deceased as shall be necessary.

Copy to be served, assent given, or publication made.

(879.) SEC. 147. A copy of such order to show cause shall be personally served on all parties interested in the estate, at least ten days before the time appointed for hearing the petition, or shall be published at least ten successive days in some newspaper as the court or judge shall order: *Provided*, however, if all persons interested in the estate shall signify in writing their assent to such sale, the notice may be dispensed with.

Hearing after proof of service.

(880.) SEC. 148. The probate court, at the time and place appointed in such order, or at such other time as the hearing may be adjourned to, upon satisfactory proof of the due service, or publication of a copy of the order, by affidavit or otherwise, or upon filing the consent in writing to such sale, of all parties interested, shall proceed to the hearing of such petition; and if such consent be not filed, shall hear and examine the allegations and proofs of the petitioners, and of all persons interested in the estate, who may oppose the application.

(881.) SEC. 149. If any of the devisees, or heirs of the

Order to be served on guardians.

deceased are minors, and have a general guardian in the county, a copy of the order shall be served upon the guardian at least ten days before the actual hearing. If they have no guardian, the court or judge shall, at the time of filing the petition, or before proceeding to act upon the petition, appoint some disinterested person their attorney, for the sole purpose of appearing for them and taking care of their interests in the proceedings. The court may also, upon the hearing, if it be deemed necessary, appoint such attorney for the heirs or devisees, if they are unrepresented, whether minors or otherwise, and may likewise, in its discretion, appoint an attorney for the creditors, if they are unrepresented. If such guardian of the minors, or such attorney for minors, or others, appear on the hearing, such appearance shall be evidence of service of notice upon such such guardian or attorney.

Who may be examined.

(882.) SEC. 150. The executor or administrator may be examined on oath, and witnesses may be examined by either party, and process be had to compel their attendance.

When to sell real estate, or any part.

(883.) SEC. 151. If it shall appear to the court that it is necessary to sell a part of the real estate, and that by a sale of such part, the residue of the estate, real or personal, or some specific part thereof, would be greatly injured, or diminished in value, or subjected to expense, or rendered unprofitable, the court may authorize the sale of the whole estate, or such part thereof as may be necessary, and most for the interest of all concerned.

Order of sale when to be made.

(884.) SEC. 152. If the court shall be satisfied, after a full hearing upon the petition, and an examination of the proofs and allegations of the parties interested, that a sale of the whole, or some portion of the real estate is necessary for any of the causes mentioned in sections 144 and 145, and section 151 of this act, or if such sale be assented to by all the persons interested, an order of sale shall be made, authorizing the executor or administrator to sell the whole, or so much and such parts of the real estate described in the petition, as the court shall judge necessary or beneficial.

What the order must contain.

(885.) SEC. 153. The order of sale shall specify the lands to be sold, and the terms of sale, which may be for cash, or on a credit not exceeding one year, payable in gross, or in installments, with interest, as the court may direct. The tract or tracts of land may be sold in one parcel, or in subdivisions, as the executor or administrator shall judge most beneficial to said estate, unless the court shall otherwise specially direct. If it appears that any part of such real estate has been devised, and not charged in such devise with the payment of debts or legacies, the court shall order the part descended to heirs to be sold before that so devised. Every such sale shall be ordered to be made at public auction, unless in the opinion of the court it would benefit the said estate to sell the whole, or some part of such real estate at private sale, or in which case the court, if the same is asked for in the petition, may order or direct such real estate, or any part thereof, to be sold at either public or private sale, as the executor or administrator shall judge to be most beneficial for said estate. If the executor or administrator shall neglect or refuse to make a sale, under the order of sale, he may be compelled to proceed to sell, by order of the court, made on motion, after due notice, by any party interested.

May be at public or private sale.

(886.) SEC. 154. If the executor or administrator neglect to apply for an order of sale whenever it be necessary, any person interested in the estate may make application therefor in the same manner as the executor or administrator, and notice thereof shall be given to the executor or administrator before the hearing. The petition of such applicant shall contain as many of the matters set forth in section 145 of this act as he can ascertain, and the decree of sale shall fix the period of time within which the executor or administrator shall make the sale.

Interested persons may apply for order of sale.

Form of petition.

(887.) SEC. 155. Upon making such order mentioned in the last section, a certified copy of the order of sale shall be delivered by the court or the clerk, to the executor or administrator, who shall be thereupon authorized and required to sell the real estate as directed.

Certified copy of order to be delivered.

(888.) SEC. 156. When a sale is ordered, notice of the time and place of holding the same shall be posted up in three public places in the county in which the land is situated, or shall be published in a newspaper, if there be one printed in the same county, and if there be none, then in such paper as the court may direct.

Notice of sale.

(889.) SEC. 157. Such sale shall be made in the county where the land is situated; but when the tract of land is situated in two or more counties, it may be sold in either of said counties. The sale shall be made between the hours of nine o'clock in the morning and the setting of the sun on the same day, and shall be made at public auction, unless the court shall have ordered that the real estate, or

Sale, where made.

some part thereof, may be sold at either public or private sale; the same shall not be sold at private sale until at least one week after notice of the terms of sale and of the time, not less than one week, within which offers or bids will be received, shall have been given according to law as in case of sales at public auction; nor shall such private sale be made unless the real estate to be sold shall have been appraised within a year previous to the time of such sale; nor shall the same be sold at private sale for any sum more than ten per cent. less than the appraised value thereof. If said real estate has not been so appraised, or if the court shall be satisfied that the appraisement is too high, or too low, appraisers shall be appointed, and they shall make an appraisement thereof in the same manner as in the case of the appraisement of the inventory.

If sale is made on credit, must be secured.

(890.) SEC. 158. The executor or administrator shall, when the sale is made upon a credit, take the note or notes, of the purchaser for the purchase money, with a mortgage, or trust deed, on the property to secure their payments.

Return of sale must be made

(891.) SEC. 159. The executor or administrator making any sale of any real estate shall make a return of his proceedings to the probate court, and the same shall be filed in the office of the clerk; and such return may be so made and filed at any time subsequent to the sale, not exceeding ten days.

May file objections, when and who.

(892.) SEC. 160. When the return of the sale is made and filed, any person interested in the estate may file written objections to the confirmation of the sale, and may be heard on any day that may be fixed by the order of the court, or judge, and may produce witnesses in support of his objections, and if the court shall be of the opinion that the proceedings were unfair, or that the sum bid is disproportionate to the value, and that a sum exceeding such bid at least ten per cent., exclusive of the expense of a new sale, may be obtained, he shall vacate said sale and direct another to be had, of which notice shall be given, and the sale shall in all respects be conducted as if no previous sale had taken place: *Provided*, that if an offer greater than ten per cent., or more than that named in the return, be made to the court in writing, by a responsible person, it shall be in the discretion of the court to accept such offer and confirm the sale to such person, or order a new sale.

(893.) SEC. 161. If it appear to the court that the sale was legally made and fairly conducted, and that the sum bid was not disproportionate to the value of the property sold, or if disproportionate, that a greater sum, as above specified, cannot be obtained, the court shall make an order confirming the sale, and directing conveyances to be executed; and such sale, from that time, shall be confirmed and valid, and a certified copy of the order authorizing the sale, and of the order confirming the same, and directing conveyances to be executed, shall be recorded in the office of the recorder of the county within which the land sold is situated: *Provided*, that if, after such confirmation, the purchaser shall neglect, or refuse to comply with the terms of sale, the court may, on motion of the executor, or administrator, and after notice to the purchaser, order a new sale of the property sold to such purchaser. If the amount realized on such resale do not cover the bid and the expenses of the previous sale, such purchaser shall be liable for the deficiency.

When order of confirmation is to be made, and when not.

(894.) SEC. 162. Such conveyances shall thereupon be executed to the purchaser, by the executor or administrator as may be proper, they shall refer to the orders of the probate court authorizing and confirming the sale of the property of the testator, or intestate, and directing conveyances thereof to be executed, and to the record of such orders in the office of the county recorder either by the date of such recording, or by the date and volume and page of such record, and such reference shall have the same effect as if the said orders were at large inserted in the conveyance. The conveyances so made shall be deemed to convey all the right, title, interest, and estate of the testator, or intestate, in the premises at the time of his death. When, however, by operation of law, or otherwise, the estate shall have acquired any right, title, or interest, in the premises, other than, or in addition to, that of the testator, or intestate at the time of his death, such right, title, or interest, shall also be passed by such conveyances.

Conveyances.

(895.) SEC. 163. Before any order is entered confirming the sale, it shall be proved to the satisfaction of the court that notice was given of the sale as herein prescribed, and the order of confirmation shall state that such proof was made.

Order of confirmation what to state.

(896.) SEC. 164. If, at the time appointed for the same, the executor or administrator shall deem it for the interest of all persons concerned therein that the sale shall be postponed, he may adjourn the same from time to time, not exceeding in all three months.

Sale may be postponed.

Notice of postponement.

(897.) SEC. 165. In case of the adjournment, notice thereof shall be given, by a public declaration, at the time and place first appointed for the sale, and if the adjournment be for more than one day, further notice shall be given, by posting notices in three, or more public places in the county where the land is situated, or publishing the same, or both, as the time or circumstances will admit.

Sale of real estate to pay legacies.

(898.) SEC. 166. When a testator shall have given any legacy by will that is effectual to pass or charge real estate, and his goods, chattels, rights, and credits shall be insufficient to pay a legacy, together with his debts and charges of administration, the executor, or administrator, with the will annexed, may obtain an order to sell his real estate for that purpose in the same manner and upon the same terms and conditions as are prescribed in this act in case of sale for the payment of debts.

Where payment of debts, etc., provided for by will.

(899.) SEC. 167. If the testator shall make provision by his will, or designate the estate to be appropriated for the payment of his debts, the expenses of administration or family expenses, they shall be paid according to the provisions of the will and out of the estate thus appropriated, so far as the same may be sufficient.

Sale without order.

(900.) SEC. 168. When such provision has been made, or any property directed by the will to be sold, whether for payment of debts, or expenses, or for any other purpose, the executor, or administrator, with the will annexed, may proceed to sell, without the order of the probate court, but he shall be bound, as an administrator, to give notice of the sale, and to return accounts thereof to the court, and to proceed in making the sale in all respects as if it were made under the order of the court, unless there are special directions given in the will in which case he shall be governed by such directions; but in all cases, no sale shall be valid unless confirmed by the court, under the rules prescribed in cases of sales of real estate by an administrator, and before granting such confirmation, the court may require security, as in cases of sales of land by an administrator.

Where provision by will insufficient.

(901.) SEC. 169. If the provision made by the will, or the estate appropriated be not sufficient to pay the debts and expenses of administration and family expenses, such part of the estate as shall not have been disposed of by the will, if any, shall be appropriated for that purpose according to the provisions of this act.

Estate subject to debts, etc.

(902.) SEC. 170. The estate, real and personal, given by the will to any legatees or devisees, shall be held liable to the payment of debts, expenses of administration, and family expenses, in proportion to the value or amount of the several devises or legacies, except that specific devises or legacies may be exempted, if it shall appear to the court necessary to carry into effect the intention of the testator, if there shall be other sufficient estate.

Contribution among legatees.

(903.) SEC. 171. When the estate given by any will has been sold for the payment of debts and expenses, all the devisees and legatees shall be liable to contribute according to their respective interests, to any devisee or legatee from whom the estate devised to him may have been taken for the payment of debts or expenses, and the probate court when distribution is made, shall, by decree for that purpose, settle the amount of the several liabilities, and decree how much each person shall contribute.

Contract for purchase of lands may be sold, how.

(904.) SEC. 172. If a deceased person at the time of his death was possessed of a contract for the purchase of lands, his interest in such land, and under such contracts, may be sold on the application of his executor or administrator, in the same manner as if he had died seized of such land, and the same proceedings may be had for that purpose as are prescribed in this chapter [act] in respect to lands of which he died seized, except as hereinafter provided.

Conditions of sale.

(905.) SEC. 173. Such sale shall be made subject to all payments that may thereafter become due on such contracts, and if there be any such payments thereafter to become due, such sale shall not be confirmed, by the probate judge, until the purchasers shall execute a bond to the executor or administrator for his benefit and indemnity, and the lands so contracted for, in double the whole amount of payments thereafter to become due on such contract, with such sureties as the probate judge shall approve. Such bond shall be conditioned that the purchaser will make all payments for such land that shall become due after the date of such sale, and will fully indemnify the executor or administrator, and the person so entitled, against all demands, costs, charges, and expenses, by reason of any covenant or agreement contained in such contract; but if there be no payments thereafter to become due on such contract, no bond shall be required by [of] the purchaser.

Executor to assign contract.

(906.) SEC. 174. Upon the confirmation of such sale, the executor or administrator shall execute to the purchaser an assignment of the contract, which assignment shall vest in the purchaser, his heirs and assigns, all the right, title and interest of the persons entitled to the interest of the deceased in the lands sold at the time of the sale, and such purchaser shall have the same rights and remedies against the vendor of such lands as the deceased would have had if he were living.

Sales by executors or administrators of lands under mortgage or lien.

(907.) SEC. 175. When any sale is made by an executor or administrator, pursuant to the provisions of this act, of land subject to any mortgage, or other lien, which is a valid claim against the estate of the deceased, the purchase money shall be applied, after paying the necessary expenses of the sale, first to the payment and satisfaction of the mortgage or lien, and the residue in course of administration; such application of the purchase money to the satisfaction of the mortgage or lien, shall be made without delay, and the land shall remain subject to such mortgage or lien, until the purchase money shall have been actually so applied: *Provided*, however, that when it shall be shown to be necessary, the court may direct that sufficient of such purchase money may be returned to meet such portion of the family allowance and charges and expenses of administration as may properly be required from the holder of such claim; such reservation of a portion of the purchase money shall not prevent the discharge of the mortgage or lien; and no lien against any estate shall be effected by the statute of limitations, pending the proceedings for the settlement of such estate: *And provided, further*, that said purchase money, or so much thereof as may be sufficient to pay such lien or liens, with interest, and any lawful costs or charges thereon, may be paid into the probate court, to be received by the clerk thereof, whereupon the lien or liens upon the land shall cease, and the purchase money shall be paid over by the clerk of the court without delay, in payment of the expenses of the sale and in satisfaction of the debt or debts upon which such mortgage, or other lien or liens, was or were given, and the balance shall thereupon at once be returned to the executor or administrator, unless for good cause shown, after notice to the executor or administrator, the court shall otherwise direct.

Expenses of sale how paid.

(908.) SEC. 176. In all cases in which land is sold by an executor or administrator, the necessary expenses of the sale shall be first paid out of the proceeds.

Liability for misconduct.

(909.) SEC. 177. If there shall be any neglect or misconduct in the proceedings of the executor or administrator in relation to any sale by which any person interested in the estate shall suffer damages, the party aggrieved may recover the same in a suit upon the bond of the executor or administrator, or otherwise, as the case may require.

Fraudulent sales.

(910.) SEC. 178. Any executor or administrator who shall fraudulently sell any real estate of his testator or intestate, contrary to the provisions of this chapter, shall be liable in double the value of the land sold, as damages, to be recovered in all actions [an action] by the person having an estate of inheritance therein.

Limitation of actions for vacating sales.

(911.) SEC. 179. No action for the recovery of any estate, sold by an executor or administrator under the provisions of this act, shall be maintained by any heir or other person claiming under the deceased testator or intestate, unless it be commenced within two years next after the sale.

Limitation of preceding section.

(912.) SEC. 180. The preceding section shall not apply to minors or others under any legal disability to sue at the time when the right of action shall first accrue; but all such persons may commence such action at any time within two years after the removal of the disability.

Account of sale to be returned.

(913.) SEC. 181. Whenever a sale has been made by an executor or administrator of any property of the estate, real or personal, it shall be his duty to return to the probate court, within ten days thereafter, an account of sales, verified by his affidavit. If he neglects to make such return, he may be punished by attachment, or his letters may be revoked, one day's notice having been first given him to appear and show cause why such attachment should not issue, or such revocation should not be made.

Executor, etc., not to be purchaser.

(914.) SEC. 182. No executor or administrator shall, directly or indirectly, purchase any property of the estate he represented [represents].

OF THE POWERS AND DUTIES OF THE EXECUTOR AND ADMINISTRATOR.

Executors to take possession of entire estate.

(915.) SEC. 183. The executor, or administrator shall take into his possession all the estate of the deceased, real and personal, until otherwise ordered by the court, and shall collect all debts due to the deceased. For the purpose of bringing suits to quiet title, or for partition of such estate, the possession of the executors, or administrators, shall be deemed the possession of the heirs, or devisees; such possession by the heirs, or devisees, shall be subject, however, to the possession of the executor, or administrator, for all purposes of administration.

Executors may sue and be sued for recovery of property.

(916.) Sec. 184. Actions for the recovery of any property, real, or personal, or for the possession thereof, and all actions founded upon contracts, may be maintained by and against executors and administrators, in all cases in which the same might have been maintained by or against their respective testators or intestates.

May compound.

(917.) Sec. 185. Whenever a debtor of a deceased person shall be unable to pay all his debts, the executor or administrator, with the approbation of the probate court, or judge, may compound with him, and give him a discharge, upon receiving a fair and just dividend of his effects. A compromise may also be authorized, when it shall appear to be just, and for the best interest of the estate.

OF THE CONVEYANCE OF REAL ESTATE BY EXECUTORS AND ADMINISTRATORS IN CERTAIN CASES.

Executor to complete contracts for sale of real estate.

(918.) Sec. 186. When any person who has agreed to convey any real estate, shall die before making the conveyance, the probate court may make a decree authorizing and directing the executor or administrator to convey such real estate to the person entitled thereto in all cases where such deceased person, if living, might be compelled to make such conveyance, provided free and adequate consideration is paid therefor.

Petition and notice of hearing.

(919.) Sec. 187. On the presentation of a petition by any person claiming to be entitled to such conveyance from any executor or administrator, setting forth the facts upon which such claim is predicated, the probate judge shall appoint a time and place for hearing such petition, and shall order public notice of the pendency thereof, in the manner such court or judge may decide.

Interested parties may contest.

(920.) Sec. 188. At the time and place appointed for such hearing, or at such other time as the same may be adjourned to, upon proof by affidavit, or otherwise, of due notice, the court shall proceed to a hearing, and all persons interested in the estate may appear and contest such petition, by filing their objections, in writing, and the court may examine, on oath, the petitioner, and all who may be produced before him, for that purpose.

Conveyances, when ordered to be made.

(921.) Sec. 189. After a full hearing upon such petition and objections, and examination of the facts and circumstances of the claim, if the court is satisfied that the petitioner is entitled to a conveyance of the real estate described in his petition, the court shall make a decree authorizing and directing the executor, or administrator, to execute a conveyance thereof to the petitioner.

(922.) SEC. 190. It shall be the duty of the executor, or administrator, to execute the conveyance according to the directions contained in the decree, and a certified copy thereof shall be recorded with the deed in the office of the recorder, in the county where the lands lie, and shall be evidence of the correctness of the proceedings, and of the authority of the executor, or administrator, to make such conveyance.

Execution of conveyance and record.

(923.) SEC. 191. If upon the hearing of the probate court, as hereinbefore provided, the court shall doubt the right of the petitioner to have a specific performance of the contract, the court shall dismiss the petition without prejudice to rights of the petitioner, who may, at any time within six months thereafter, proceed in the district court, to enforce a specific performance.

Rights of petitioner to enforce contract.

(924.) SEC. 192. Every conveyance made in pursuance of a decree of the probate court, as provided in this act, shall be effectual to pass the estate contracted for as fully as if the contracting party himself was still living and then executed the conveyance.

Effect of conveyance.

(925.) SEC. 193. A copy of the decree for a conveyance made by the probate court, and duly certified and recorded in the office of the recorder of the county where the lands lie, shall give the person entitled to the conveyance a right to the possession of the lands contracted for, and to hold the same according to the terms of the intended conveyance, in like manner as if they had been conveyed in pursuance of the decree.

Effect of recording a copy of the decree.

(926.) SEC. 194. The recording of any decree, as provided in the preceding section, shall not prevent the court making such decree from enforcing the same by other process.

Not to prevent enforcing the decree by other process.

(927.) SEC. 195. If the person to whom the conveyance was to be made shall die before the commencement of the proceedings, according to the provisions of this act, or before the completion of the conveyance, any person who would have been entitled to the estate under him as heir, devisee, or otherwise, in case the conveyance had been made according to the terms of the contract, or the executor or administrator of such deceased person, for the benefit of the person so entitled, may commence such proceedings, or may prosecute the same if already commenced, and the con-

When party to whom conveyance is to be made is dead.

veyance shall be so made as to vest the estate in the same persons who would have been entitled to it, or in the executor or administrator for their benefit.

OF ACCOUNTS TO BE RENDERED BY EXECUTORS AND ADMINISTRATORS, AND OF THE PAYMENT OF DEBTS.

When executor or administrator personally liable.

(928.) SEC. 196. No executor or administrator shall be chargeable upon any special promise to answer damages or to pay the debts of the testator or intestate out of his own estate, unless the agreement for that purpose, or some memorandum or note thereof, is in writing and signed by such executor or administrator, or by some other person by him thereunto specially authorized.

Executor to be charged with all estate, etc.

(929.) SEC. 197. Every executor and administrator shall be chargeable in his own account with the whole of the estate of the deceased, which may come to his possession at the value of the appraisement contained in the inventory, except as provided in the following sections, and with all the interest, profit, and income of the estate.

Not to profit or lose by estate.

(930.) SEC. 198. He shall not make profit by the increase, nor suffer loss by the decrease or destruction without his fault, of any part of the estate. He shall account for the excess when he shall sell any part of the estate for more than the appraisement, and if any shall be sold for less than the appraisement he shall not be responsible for the loss if the sale has been justly made.

Uncollected debts, without fault.

(931.) SEC. 199. No executor or administrator shall be accountable for any debts due to the deceased, if it shall appear that they remain uncollected without his fault.

Compensation of the executor or administrator.

(932.) SEC. 200. He shall be allowed all necessary expenses in the care, management, and settlement of the estate, and for his services such fees as the court may deem just, but when the deceased shall, by his will, make some other provision for the compensation of his executor, that shall be deemed a full compensation for his services, unless he shall, by a written instrument, filed in the probate court, renounce all claim for compensation provided by the will.

Not to purchase claims against the estate.

(933.) SEC. 201. No administrator or executor shall purchase any claim against the estate he represents; and if he shall have paid any claim for less than its nominal value, he shall only be entitled to charge in his account so much as he shall have actually paid.

Executor's and administrator's commissions.

(934.) SEC. 202. When no compensation shall have been provided by the will, or the executor shall renounce all claim thereto, he shall be allowed commissions upon the amount of the whole estate accounted for by him, as follows: For the first thousand dollars, at the rate of seven per cent.; for all above that sum and not exceeding ten thousand dollars, at the rate of five per cent.; for all above that sum at the rate of four per cent.; and the same commission shall be allowed administrators. In all cases such further allowance may be made as the probate judge may deem just and reasonable.

(935.) SEC. 203. Within six months after his appointment, and thereafter at any time required by the court, either upon its own motion or upon the application of any person interested in the estate, the executor or administrator shall render, for the information of the court, an exhibit under oath, showing the amount of money received and expended by him, the amount of all claims presented against the estate and the names of the claimants, and all other matters necessary to show the condition of its affairs.

To render an exhibit of receipts and disbursements.

(936.) SEC. 204. If the executor or administrator fail to render an exhibit at the expiration of six months, it shall be the duty of the judge to cause a citation to be issued requiring him to appear and render it.

Citation to account.

(937.) SEC. 205. When an exhibit is rendered by an executor or administrator, any person interested may appear, and by objections in writing contest any account or statement therein contained. The court may examine the executor or administrator, and if he has been guilty of negligence, or has wasted or embezzled, or mismanaged the estate, his letters shall be revoked.

Interested persons may contest.

(938.) SEC. 206. If any executor or administrator neglect or refuse to appear and render an exhibit after having been duly cited, an attachment may be duly issued against him, or his letters may be revoked in the discretion of the court.

Attachment for not obeying citation.

(939.) SEC. 207. Every executor or administrator shall render a full account and a report of his administration, upon the expiration of one year from the time of his appointment; and if he fail to present his account, it shall be the duty of the court, or judge, to compel the rendering of such account, by attachment, and any person interested in the estate may apply for and obtain an attachment, but no attachment shall issue unless a citation has been first issued and returned, requiring the executor, or administrator, to appear and show cause why an attachment should not issue.

To render account at expiration of term.

Every account rendered, shall exhibit not only the debts which may have been paid, but also a statement of all debts which have been duly presented and allowed during the period embraced in the account.

Executor to account after his authority revoked.

(940.) SEC. 208. Whenever the authority of an executor or administrator shall cease or be revoked for any reason, he may be cited to account before the probate court, at the instance of the person succeeding to the administration of the same estate, in like manner as he might have been cited by any person interested in the estate during the time he was executor or administrator.

Revoking authority of executor, when.

(941.) SEC. 209. If the executor or administrator resides out of the county, or absconds, or conceals himself so that the citation cannot be personally served and shall neglect to render an account within thirty days after the time above prescribed, or if he shall neglect to render an account within thirty days after being committed where the attachment has been executed, his letters shall be revoked.

To produce and file vouchers, which remain in court.

(942.) SEC. 210. In rendering his account, the executor, or administrator, shall produce vouchers for all charges, debts, claims, and expenses, which he shall have paid, which vouchers shall be filed and remain in the court; and he may be examined on oath touching such payments, and also touching any property and effects of the deceased and the disposition thereof. When any such voucher shall be required for other purposes, it may be withdrawn on leaving a certified copy on file; if any voucher be lost, or for other good reason the same cannot be produced on settlement, the payment may be proved by the oath of any competent witness.

Vouchers for items less than $20, when excepted.

(943.) SEC. 211. On the settlement of his account he may be allowed any item of expenditure not exceeding twenty dollars, for which no voucher is produced, if such item be supported by his own oath positive to the fact of payment, specifying where and to whom the payment was made, and if such oath be uncontradicted; but such allowances in the whole shall not exceed five hundred dollars for payment in behalf of any one estate.

Settlement of accounts to be conclusive, when and when not.

(944.) SEC. 212. The settlement of the account and the allowance thereof by the court, or upon appeal, shall be conclusive against all persons in any way interested in the estate, saving, however, to all persons laboring under any legal disability, their rights to proceed against the executor or administrator, either individually or upon his bond within two years after their respective disabilities shall cease, and in any action brought by any such person, the allowance and settlement of the account shall be deemed presumptive evidence of its correctness.

(945.) SEC. 213. The debts of the estate shall be paid in the following order: Order in which debts to be paid.

First—Funeral expenses.

Second—The expenses of the last sickness.

Third—Mortgages in the order of their dates.

Fourth—Judgments rendered against the deceased on which execution has issued in his lifetime.

Fifth—All other demands against the estate.

(946.) SEC. 214. The preference given in the preceding section to a mortgage, shall only extend to the proceeds of the property mortgaged. If the proceeds of such property be insufficient to pay the mortgage, the part remaining unsatisfied shall be classed with other demands against the estate. When property insufficient to pay mortgage.

(947.) SEC. 215. If the estate be insufficient to pay all the debts of any one class, each creditor shall be paid a dividend in proportion to his claim; and no creditor of any one class shall receive any payment until all of those of the preceding class shall be fully paid. Estate insufficient, a dividend to be paid.

(948.) SEC. 216. It shall be the duty of the executor or administrator, as soon as he has sufficient funds in his hands to pay the funeral expenses and the expenses of the last sickness, and the allowance made to the family of the deceased; and he may retain in his hands the necessary expenses of administration, but he shall not be obliged to pay any other debt, or any legacy until, as prescribed in this act, the payment has been ordered by the court. Funeral expenses and expenses of last sickness.

(949.) SEC. 217. Upon the settlement of the accounts of the executor, or administrator, at the end of the year, as required in this act, the court shall make an order for the payment of the debts, as the circumstances of the estate shall require; if there be not sufficient funds in the hands of the executor, or administrator, the court shall specify in the decree the sum to be paid to each creditor; if the whole property of the estate be exhausted by such payment or distribution, such account shall be considered as a final account, and the executor, or administrator, shall be entitled to his discharge on producing and filing the necessary vouchers and proofs showing that such payments have been Order for payments of debts and discharge of executor.

made, and that he has fully complied with the decree of the court.

Provision for contingent or disputed claim.

(950.) SEC. 218. If there is any claim not due, or any contingent or disputed claim against the estate the amount thereof, or such part of the same as the holder would be entitled to if the claim were due, or established, or absolute, shall be paid into the court, where it shall remain to be paid over to the party when he shall become entitled thereto, or if he fail to establish his claim, to be paid over or distributed as the circumstances of the estate require: *Provided*, that if any creditor whose claim has been allowed, but is not yet due, shall appear and assent to a deduction therefrom of the legal interest for the time the claim has yet to run, he shall be entitled to be paid accordingly.

When executor personally liable.

(951.) SEC. 219. Whenever a decree shall be made by the probate court for the payment of creditors, the executor, or administrator shall be personally liable to each creditor for his claim, or the dividend thereon, and execution may be issued on such decree, as upon judgment in the district court, in favor of each creditor, and the same proceeding may be had under such execution as if it had been issued from the district court. The executor or administrator shall also be liable on his bond to each creditor.

Claims not included in order for payment of debts, how disposed of.

(952.) SEC. 220. When the accounts of the administrator or executor have been settled, and an order made for the payment of debts and distribution of the estate, no creditor whose claim was not included in the order for payment shall have any right to call upon the creditors who have been paid, or upon the heirs, devisees, or legatees to contribute to the payment of his claim; but if the executor or administrator shall have failed to give the notice to the creditors as prescribed by this act, such creditor may recover on the bond of the executor or administrator the amount of his claim, or such part thereof as he would have been entitled to had it been allowed: *Provided*, that this section shall not apply to any creditor whose claim was not due ten months before the day of settlement, or whose claim was contingent and did not become absolute ten months before such day.

Order for payment of legacies and extension of time.

(953.) SEC. 221. If the whole of the debts shall have been paid by the first distribution, the court shall proceed to direct the payment of legacies and the distribution of the estate among the heirs, legatees, or other persons entitled, as hereinafter provided; but if there be debts remaining unpaid, or if, for other reasons, the estate be not in a proper condition to be closed, the court shall give such extension of time as may be reasonable for a final settlement of the estate.

Final account when to be made.

(954.) Sec. 222. At the time designated in the last section, or sooner, if within that time all the property of the estate shall have been sold, or there shall be sufficient funds in his hands for the payment of all the debts due by the estate, and the estate be in a proper condition to be closed, the executor or administrator, shall render a final account and pray a settlement of his administration.

How neglect to render final account treated.

(955.) Sec. 223. If he neglect to render his account, the same proceedings may be had as heretofore prescribed, in regard to the first account to be rendered by him, and all the provisions of this act relative to the last mentioned account, and the notice and settlement thereof, shall apply to his account presented for final settlement.

OF THE PARTITION AND DISTRIBUTION OF THE ESTATE.

Payment of legacies upon giving bonds.

(956.) Sec. 224. At any time after the lapse of four months, after the issuing of letters testamentary, or of administration, any heir, devisee, or legatee may present his petition to the court, that the legacy or share of the estate to which he is entitled may be given to him upon his giving bonds, with security, for the payment of his proportion of the debts of the estate.

Notice of application for legacies.

(957.) Sec. 225. Notice of the application shall be given to the executor, or administrator, personally, and to all persons interested in the estate, in the manner the court may direct.

Who may resist application.

(958.) Sec. 226. The executor or administrator, or any person interested in the estate, may appear and resist the application, or any other heir, devisee, or legatee may make a similar application for himself.

Decree prayed for to require bond, which must be given

(959.) Sec. 227. If, at the hearing, it appear that the estate is but little indebted, and that the share of the party or parties applying may be allowed to him or them, without injury to the creditors of the estate, the court shall make a decree in conformity with the prayer of the applicant or applicants: *Provided*, each one of them shall first execute and deliver to the executor or administrator a bond in such sum as shall be designated by the probate judge, and with sureties to be approved by him, payable to the executor or administrator, conditioned for the payment by the heir, legatee or devisee, whenever required, of his proportion of the debts due from the estate.

What the decree may order.

(960.) SEC. 228. Such decree may order the executor or administrator to deliver to the heir, legatee, or devisee, the whole portion of the estate to which he may be entitled, or only a part thereof.

How partition made.

(961.) SEC. 229. If in the execution of such decree any sale of property be necessary or partition be necessary between two or more of the parties interested, it shall be made in the manner hereinafter prescribed.

Cost how paid.

(962.) SEC. 230. The cost of the proceedings authorized by the preceding section shall be paid by the applicant, or if there be more than one, shall be apportioned equally amongst them.

Order of payment of bond, and suit thereon.

(963.) SEC. 231. Whenever any bond has been executed and delivered under the provisions of the preceding sections, and the executor or administrator shall ascertain that it is necessary for the settlement of the estate to require the payment of any part of the money thereby secured, he shall petition the court for an order requiring the payment, and shall have a citation issued and served on the party bound, requiring him to appear and show cause why the order shall not be made. At the hearing, the court, if satisfied of the necessity of such payment, shall make an order accordingly, designating the amount, and giving a time within which it shall be paid. If the money be not paid within the time allowed, an action may be maintained by the executor or administrator on the bond.

Distribution of estate, how made and to whom.

(964.) SEC. 232. Upon the final settlement of the accounts of the executor, or administrator, or at any subsequent time, upon the application of the executor, or administrator, or of any heir, devisee or legatee, or the grantee of the heir, devisee or legatee, the court shall proceed to distribute the residue of the estate, if any, among the persons who by law are entitled. A statement of the receipts and disbursements of the executor, or administrator, since the rendition of his final accounts, shall be reported and filed at the time of making such distribution, unless distribution of the real estate only be made, and a settlement thereof, together with an estimate of the expenses of closing the estate, shall be made by the court, and shall be included in the decree, or the court, or judge, may order notice of the settlement of such supplementary account, and may refer the same as in other cases of the settlement of accounts.

What the decree must contain.

(965.) SEC. 233. In the decree the court shall name the persons and the proportion or parts to which each shall be entitled, and such persons shall have the right to demand and recover their respective shares from the executor, or administrator, or any person having the same in possession.

Upon whose petition the decree made.

(966.) SEC. 234. The decree may be made on the petition of the executor, or administrator, or of any person interested in the estate, and shall only be made after full notice has been given, unless waived by all interested, in the manner the court may direct.

Estate in common.

(967.) SEC. 235. When the estate, real or personal assigned by the decree of distribution to two, or more heirs, devisees, or legatees, shall be in common and undivided, and the respective shares shall not be separated and distinguished, or when property of the estate shall be held in common and undivided with other parties, partition may be made by three disinterested persons to be appointed commissioners for that purpose by the probate court, or judge, who shall be duly sworn to the faithful discharge of their duties, by any officer authorized to administer oaths. A certified copy of the order of their appointment, and of the decree assigning and distributing the estate, shall be issued to them as their warrant, and their oath shall be endorsed thereon. Upon consent of the parties, or when the court shall deem it proper and just, it shall be sufficient to appoint one commissioner only who shall have the same authority and be governed by the same rules as if three were appointed.

Commissioners.

Estate in different counties, how divided.

(968.) SEC. 236. If the real estate shall be in different counties, the probate court may, if it shall judge proper, appoint a commissioner, or commissioners, for each county, or one commission may make division of such real estate, wherever situated within this Territory.

Upon whose petition order to be made.

(969.) SEC. 237. Such partition may be ordered on the petition of any of the persons interested, but before commissioners shall be appointed, or any partition shall be ordered as directed in this act, notice shall be given to all persons interested, who shall reside in this Territory, or their guardians, and to agents, attorneys, or guardians, if there be any in this Territory, of such as reside out of the Territory, either personally, or by public notice, as the probate court shall direct. The petition for partition may be filed at any time before the decree of distribution, and attorneys, guardians, and agents, may be appointed, and notice be given, but the commissioners shall not be appointed until the decree has been made assigning the estate for distribution; but when the application is made solely to have partition between the estate administered upon and any other parties, such application may be made and such partition ordered, at any time the court may direct.

Partition may be made although some interests sold.

(970.) SEC. 238. Partition of the real estate may be made as provided in this act, although some of the original heirs or devisees may have conveyed their shares to other persons, and such shares shall be assigned to the person holding the same, in the same manner as they otherwise should have been to such heirs or devisees.

Shares to be set out in proportion to right.

(971.) SEC. 239. The several shares in the real and personal estate shall be set out to each individual in proportion to his right, by such metes and bounds, or description, that the same can be easily distinguished, unless two or more of the parties interested shall consent to have their shares set out, so as to be held by them in common and undivided.

Whole estate may be assigned to one in certain cases.

(972.) SEC. 240. When any such real estate cannot be divided without prejudice or inconvenience to the owners, the probate court may assign the whole to one or more of the parties entitled to share therein who will accept it, always preferring the males to the females, and among children, preferring the elder to the younger: *Provided*, the parties so accepting the whole shall pay to the other parties interested their just proportion of the true value thereof, or shall secure the same to their satisfaction, or in case of the minority of such party, then to the satisfaction of his or her guardian, and the true value of the estate shall be ascertained and reported by commissioners; and when the commissioners appointed to make partition shall be of the opinion that any such real estate cannot be divided without prejudice or inconvenience to the owners, they shall so report to the court, and shall recommend that the whole be assigned as before provided, and shall find and report the true value of such real estate. Upon the return of the report of the commissioners, and upon making or securing payment as before provided, the court may, if the same shall appear just and proper, confirm the report, and thereupon the assignment shall be complete, and the whole of such real estate shall vest in the person or persons to whom the same shall be so assigned.

(973.) SEC. 241. When any tract of land or tenement shall be of greater value than either party's share in the estate to be divided, and cannot be divided without injury to the same, or the interest of those interested may require, it may be set off by the commissioners appointed to make partition, to either one or more of the parties, who will accept it, giving preference as prescribed in the preceding section: *Provided*, the party so accepting shall pay or secure to one or more of the others, such sums as the commissioners shall award, to make the partition equal, and the commissioners shall make their award accordingly; but such partition shall not be established by the court until the sums so awarded shall be paid to the parties entitled to the same, or secured to their satisfaction.

Payment for equality of partition, by whom and how.

(974.) SEC. 242. When it cannot otherwise be fairly divided, the whole, or any part of the estate, real or personal, may be recommended by the commissioners to be sold; and if the report be confirmed, the court may order a sale by the executor or administrator, or by a commissioner appointed for that purpose, and distribute the proceeds. The sale shall be conducted and reported upon, and be confirmed, in the same manner and under the same rules as in ordinary cases of sales of land by an administrator under this act.

Estate may be sold.

(975.) SEC. 243. When partition of real estate among heirs or devisees shall be required, and such real estate shall be in common and undivided with the estate of any other person, the commissioners shall first divide and sever the estate of the deceased from the estate in which it lies in common, and such division, so made and established by the probate court, shall be binding upon all persons interested. Upon application by petition of the heirs or creditors, or any of them, the probate court may authorize the executor or administrator to bring suit for such partition in the district court. Such suit may also be brought by an executor, when so authorized by the terms of the will.

When estate is in common it shall first be set apart.

(976.) SEC. 244. Before any partition shall be made, or any estate divided, as provided in this act, guardians shall be appointed for all minors and insane persons interested in the estate to be divided; and some discreet person shall be appointed to act as agent for such parties as reside out of the Territory, or an attorney for all absent heirs and persons interested; and notice shall be given to all persons interested in the partition, their guardians, agents or attorneys, by the commissioners, of the time when they shall proceed to make partition. The commissioners may take testimony, order surveys, and take such other steps as may be neces-

Guardians must be appointed for minors before partition.

sary to enable them to form a judgment upon the matters before them.

To make report, and partition to be recorded.

(977.) SEC. 245. The commissioners shall make report of their proceedings and of the partition agreed upon by them, to the probate court, in writing, and the court may, for sufficient reasons, set aside such report, and commit the same to the same commissioners, or appoint others; and when such report shall be finally confirmed, a certified copy of the decree of partition made thereon, attested by the clerk, under the seal of the court, shall be recorded in the office of the recorder of the county wherein the land lies.

When commissioners to make partition are not necessary.

(978.) SEC. 246. When the probate court shall make a decree assigning the residue of any estate to one or more persons entitled to the same, it shall not be necessary to appoint commissioners to make partition or distribution of such estate, unless the parties to whom the assignment shall be decreed, or some of them, shall request that such partition shall be made.

Advancements made to heirs.

(979.) SEC. 247. All questions as to advancements made, or alleged to have been made, by the deceased to any heirs, may be heard and determined by the probate court, and shall be specified in the decree assigning and distributing the estate, and the final decree of the probate court, or, in case of appeal, of the supreme court, shall be binding on all parties in the estate.

Court may appoint agent to take possession for absentees.

(980.) SEC. 248. When any estate shall be assigned by decree of the court, or distributed by commissioners, as provided in this act, to any person residing out of this Territory, and having no agent therein, and it shall be necessary that some person should be authorized to take possession and charge of the same for the benefit of such absent person, the court may appoint an agent for that purpose, and authorize him to take charge of such estate, as well as to act for such absent person in the partition and distribution.

Agent to give bond and his compensation.

(981.) SEC. 249. Such agent shall give a bond to the judge of probate, to be approved by him, faithfully to manage and account for such estate, before he shall be authorized to receive the same; and the court appointing such agent may allow a reasonable sum out of the profits of such estate for his services and expenses.

Unclaimed estate how disposed of.

(982.) SEC. 250. When the estate shall remain in the hands of the agent unclaimed for a year, it shall be sold under the order of the court, and the proceeds, deducting the expenses of the sale, to be allowed by the court, shall be paid into the Territorial treasury. When the payment is made, the agent shall take from the treasury, duplicate receipts, one of which he shall file in the office of the auditor, and the other in the probate court. (1)

Liability of agent on his bond.

(983.) Sec. 251. The agent shall be liable on his bond for the care and preservation of the estate while in his hands, and for the payment of the proceeds of the sale, as required in the preceding section, and may be sued thereon by any person interested.

Certificate to claimant.

(984.) Sec. 252. When any person shall appear and claim the money paid into the treasury, the probate court making the distribution being first satisfied of his right shall grant him a certificate under its seal; and upon the presentation of the certificate to the auditor, he shall draw his warrant on the treasurer for the amount.

Final settlement, decree and discharge.

(985.) Sec. 253. When the estate has been fully administered, and it is shown by the executor, or administrator, by the production of satisfactory vouchers, that he has paid all sums of money due from him, and delivered up, under the order of the court, all the property of the estate to the parties entitled, and performed all the acts lawfully required of him, the court shall make a decree discharging him from all liability to be incurred thereafter.

Discovery of property.

(986.) Sec. 254. The final settlement of an estate shall not prevent a subsequent issuance of letters testamentary, or of administration, with the will annexed, should other property of the estate be discovered, or should it become necessary or proper, from any cause, that letters should be again issued.

REMOVAL OF EXECUTORS AND ADMINISTRATORS IN CERTAIN CASES.

Executor or administrator may be removed, when.

(987.) Sec. 255. Whenever the probate judge has reason to believe from his own knowledge, or from credible information, that any executor or administrator, has wasted, embezzled, or mismanaged, or is about to waste, or embezzle, the property of the estate committed to his charge, or has committed, or is about to commit, a fraud upon the estate, or has been incompetent to act, or has permanently removed from the Territory, or has wrongfully neglected the estate, or has long neglected to perform any act as such executor, or administrator, it shall be his duty, by an order entered upon the minutes of the court, to suspend the powers of such executor, or administrator, until the matter can be investigated.

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(1) See secs. (713.) (730.) (731.)

During proceedings special administrator may be appointed.

(988.) SEC. 256. During the suspension of the powers, of the executor, or administrator, under the authority of the preceding section, the probate court, or judge, may, if the condition of the estate requires it, appoint a special administrator to take charge of the effects of the estate, who shall give bond and account, as other special administrators are required to do.

Notice to be given.

(989.) SEC. 257. When such suspension has been made, notice thereof shall be given to the executor or administrator, and he shall be cited to appear and show cause why his letters should not be revoked. If he fail to appear in obedience to the citation, or if appearing, the court be satisfied that there exists cause for his removal, his letters shall be revoked, and letters of administration granted anew, as the case may require.

Persons interested may show cause.

(990.) SEC. 258. At the hearing, any person interested in the estate may appear and file his allegations in writing, showing that the executor or administrator should be removed, such allegations shall be heard and determined by the court.

How notice given in certain cases.

(991.) SEC. 259. If the executor or administrator has absconded, or conceals himself, or has removed, or absented himself, from the Territory, notice may be given him of the pendency of the proceedings, by publication, in such manner as the court may direct, and the court may proceed upon such notice as if the citation had been personally served.

May compel attendance.

(992.) SEC. 260. In the proceedings authorized by the preceding sections of this act, for the removal of an executor, or administrator, the court may compel his attendance by attachment, and may compel him to answer questions, on oath, touching his administration, and upon his refusal so to do, may commit him until he obey, or may revoke his letters, or both.

MISCELLANEOUS PROVISIONS.

Orders and decrees to be entered in minutes.

(993.) SEC. 261. All orders and decrees made by the probate court shall be entered at length in the minute book of the court, the judge shall sign the minutes, of the proceedings. When any publication is ordered, such publication shall be made daily, or otherwise, as often during the prescribed period as the paper is regularly issued, unless otherwise provided in this act. The court, or judge, may,

Publications.

however, prescribe a less number of publications during the period prescribed.

(994.) SEC. 262. Whenever personal notice is required by this act, or the act to provide for the appointment, and prescribe the duties of guardians, to be given to any party to a proceeding in the probate court, and no other mode of giving notice is prescribed, it shall be given by citation, issued from the court, signed by the clerk, and under the seal of the court, directed to the sheriff of the proper county and requiring him to cite such person, to appear before the court, or judge, as the case may be, at a time and place to be named in the citation, or the citation may be addressed directly to the party to be cited, and may be served in like manner as a summons issued from the district court. In the body of the citation shall be briefly stated the nature, or character of the proceedings. Notice to be given by citation.

(995.) SEC. 263. The officer to whom the citation is directed shall serve it by delivering a copy to the person therein named, or to each of them, if there be more than one, and shall return the original to the court, according to its directions, indorsing thereon the time and manner of service. All proofs of publication or other mode, or modes of giving notice, or serving papers, may be made by the affidavit of any person competent to be a witness, which affidavit shall be filed, and shall constitute *prima facie* evidence of such publication, or notice of service. Citation how served. Return.

(996.) SEC. 264. When no other time is specially prescribed, citation shall be served at least five days before the return day thereof. To be served five days before return.

(997.) SEC. 265. Unless otherwise specially prescribed, the clerk of the probate court shall have power to administer all oaths necessary and proper to be taken, touching any matter pending in the probate court, or in any manner connected with any proceedings of which the court has jurisdiction, and he shall have power to issue citations and *subpœnas* upon the application of any party, without the order of the judge, except in those cases in which such order is specially required by law for the issuing of a citation. Clerk to administer oaths, etc.

(998.) SEC. 266. All writs and processes issuing from the probate court shall be signed by the clerk, and authenticated with the seal of the court, except *subpœnas*, notices and publications, which need not be under seal. Process to be signed by clerk and under seal.

(999.) SEC. 267. The practice in the district court shall be applicable to proceedings in the probate court, so far as Practice in district court applicable.

the same does not conflict with any enactment specially applicable to the probate court, or is not inconsistent with the provisions of this act, or the act to provide for the appointment, and prescribe the duties of guardians. For the purpose of taking the testimony of a witness, or witnesses, in other counties of this Territory, or in other Territories, States and countries, a commission may be issued whenever, in the discretion of the court, or of the probate judge, the same may be ordered, and when ordered, the formalities attending the issuance, execution and return thereof, shall be similar to those prescribed in the case of a commission issued from the district court so far as the same are applicable; when issued *ex parte*, no cross-interrogations shall be necessary, unless by direction of the court, or probate judge, nor shall notice be necessary, unless the court, or judge, shall so order. The court, or judge may annex cross-interrogatories, or may refer the matter to a referee to be appointed by him for that purpose, and when notice is so ordered, the court, or judge, shall prescribe the mode of giving such notice, whether by personal notice, or by posting notices, or by publication.

Attorney once appointed shall represent parties in other proceedings.

(1000.) SEC. 268. When, upon any proceeding in an estate, an attorney has been appointed for minors and absent persons in interest in the estate, such attorney shall represent such parties in any subsequent proceedings had; unless, on such subsequent proceedings, another person be appointed, and provided such attorney be present in court in such subsequent proceedings. When any such attorney has been appointed, and when the probate judge has appointed a referee to take proofs, make computations, or perform other service, a reasonable compensation may be allowed, out of the estate, to such attorney and to such referee, for the services he may have rendered.

Decree relative to homestead, and effect thereof.

(1001.) SEC. 269. When a decree is made, setting apart a homestead, or making distribution of real estate, or determining any other matter, affecting the title to real estate, a certified copy of such decree shall be recorded in the office of the recorder of the county in which the land is situated.

Costs by whom paid in certain cases.

(1002.) SEC. 270. Where it is not otherwise prescribed by law, the probate court, or the superior court on appeal may, in its discretion, order costs to be paid by any party to the proceedings, or out of the estate, as justice may require; execution for the costs may issue out of the probate court.

(1003.) SEC. 271. When the order, or decree, appointing an executor, or administrator, or guardian, shall be reversed on appeal, all lawful acts in administration upon the estate, performed by such executor, or administrator, or guardian, if he shall qualify, shall be as valid as if such order, or decree, had been affirmed. When any executor, or administrator, resigns, or is removed, a successor may be appointed, if a necessity therefor exists, without again proving the death and residence of the testator, or intestate.

Effects of acts of administrator when order is reversed.

(1004.) SEC. 272. Where it is not otherwise prescribed by law, the probate court, or the superior court, on appeal may, in its discretion, order costs to be paid by any party to the proceedings, or out of the estate, as justice may require; execution for the costs may issue out of the probate court.

Costs by whom paid.

(1005.) SEC. 273. The estates of persons deceased prior to the passage of this act shall be settled in accordance herewith so far as practicable.

Estates of persons deceased prior to this act.

TITLE XV.

GENERAL PROVISIONS RELATING TO FRAUDULENT CONVEYANCES AND CONTRACTS.

SECTION.
1006. Persons knowingly a party to wrongful conveyance, etc., guilty of fraud.
1007. Obtaining property by means of false pretenses.
1008. Liable in damages.
1009. False representations and pretenses relative to mines.
1010. Requisites to convey certain interests in lands.
1011. Qualification of last section.
1012. Conveyance with intent to defraud.
1013. Deeds of gift, etc., for use of persons making, void as to creditors.
SECTION.
1014. Certain contracts to be void unless in writing.
1015. Contracts for the sale of goods exceeding three hundred dollars.
1016. When sale, etc., to be presumed fraudulent, unless followed by change of possession.
1017. Conveyances to hinder or defraud creditors.
1018. Certain conveyances, etc., void as against heirs, etc.
1019. Instruments may be signed by agent.

An Act in relation to defrauding and cheating or swindling. (1)

[*Approved January* 20, 1865.]

Persons knowingly a party to wrongful conveyance, etc., guilty of fraud.

(1006.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That any person in any manner knowingly a party to wrongfully conveying any land or land claim or improvement thereon, any bond, execution or any other description of property with intent to deceive or defraud, or to delay or defeat the payment of just debts, or who shall sell or exchange any description of property which he at the time knows is adulterated, damaged or diseased, without first truly informing the purchaser concerning the actual condition or quality of said property, shall be deemed guilty of fraud, and shall, on conviction thereof, be fined not exceeding one thousand dollars, or be imprisoned in the county jail not exceeding one year, at daily hard labor, during customary hours, upon the streets, highways and public works and buildings of the county: *Provided*, such labor shall be performed with a ball and chain attached to a prisoner whenever the jailor deems it necessary; or both fine and imprisonment as aforesaid.

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(1) This act was repealed by the "Act to establish a penal code," but as section (1009.) refers to the act, it is included in this compilation.

(1007.) SEC. 2. Any person, knowingly obtaining any property through any false pretense or representation made by himself or at his instigation, shall be deemed a cheat or swindler, and shall, on conviction thereof, be fined or imprisoned, or both, as provided in the foregoing section for the punishment of fraud.

Obtaining property by means of false pretenses.

(1008.) SEC. 3. Any person convicted under this act shall also be liable to make full restitution and pay all damages to the party aggrieved.

Liable in damages.

An Act supplementary to an act entitled "An act in relation to defrauding, cheating or swindling," approved January 20, 1864.

[*Approved February* 20, 1874.]

(1009.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That any person or persons who shall hereafter, for the purpose of selling any mining claim or any interest therein, place in or upon such claim any ores, or specimens of ores not extracted therefrom, or shall exhibit any ores or certificate of assay of ore not extracted therefrom, with intent to deceive any person or persons by such artifice; or who shall obtain any money or property by such false pretense and artifice; and all persons who shall knowingly and willingly aid or abet such false pretense by furnishing ore or assays of ore for such purpose; or who shall procure or furnish any false sampling of ores; or who shall produce any false certificate of assay of any ores, for such purpose, shall be deemed guilty of fraud, and shall, on conviction thereof, in any court having competent jurisdiction, be punished as provided in said act, to which this act is supplemental.

False representations and pretenses relative to mines.

An Act to punish frauds.

[*Approved February* 18, 1876.]

(1010.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That no estate or interest in lands, other than leases for a term not exceeding one year, nor any trust or power over or concerning lands,

Requisites to convey certain interests in lands.

or in any manner relating thereto, shall hereafter be created, granted, assigned, surrendered or declared, unless by act or operation of law, or by deed or conveyance in writing, subscribed by the party creating, granting, assigning, surrendering or declaring the same, or by his lawful agent thereunto authorized by writing.

Qualification of last section.

(1011.) SEC. 2. The foregoing provision shall not be construed to affect the power of a testator in the disposition of his real estate by last will and testament; nor to prevent any trust from arising or being extinguished by implication or operation of law; nor to abridge the powers of courts to compel the specific performance of agreements in case of part performance thereof.

Conveyance with intent to defraud.

(1012.) SEC. 3. Every conveyance of any estate or interest in lands, or the rents or profits of lands, and every charge upon lands, or the rents or profits thereof made or created with intent to defraud prior or subsequent purchasers thereof, for a valuable consideration, shall be void as against such purchasers.

Deeds of gift, for use of persons making, void as to creditors.

(1013.) SEC. 4. All deeds of gift, all conveyances, transfers or assignments, verbal or written, of goods, chattels or things in action, made in trust for the use of the person making the same, shall be void as against the creditors existing or subsequent of such person.

Certain contracts to be void unless in writing.

(1014.) SEC. 5. In the following cases every agreement shall be void, unless such agreement or some note or memorandum thereof, expressing the consideration be in writing and subscribed by the party, to be charged therewith.

First—Every agreement that by its terms is not to be performed within one year from the making thereof.

Second—Every promise to answer for the debt, default or miscarriage of another.

Third—Every agreement, promise or undertaking, made upon consideration of marriage, except mutual promises to marry.

Contracts for the sale of goods exceeding three hundred dollars.

(1015.) SEC. 6. Every contract for the sale of any goods, chattels, or things in action for the price of three hundred dollars, or over, shall be void, unless: 1st, a note or memorandum of such contract be made in writing and subscribed by the parties to be charged therewith; or 2d, Unless the buyer shall accept or receive part of such goods, or the evidences, or some of them, of such things in action; or 3d, Unless the buyer shall at the time pay some part of the purchase money.

When sale, etc., to be presumed fraudulent, unless followed by change of possession.

(1016.) SEC. 7. Every sale made by a vendor of goods or chattels in his possession or under his control, and every assignment of goods and chattels, unless the same be accompanied by a delivery within a reasonable time, and be followed by an actual and continued change of the possession of the things sold or assigned, shall be conclusive evidence of fraud as against the creditors of the vendor, or assignor, or subsequent purchasers in good faith. The word "creditors," as used in this section, shall be construed to include all persons who shall be creditors of the vendor, or assignor, at any time while such goods and chattels shall remain in his possession or under his control.

Conveyances to hinder or defraud creditors.

(1017.) SEC. 8. Every conveyance or assignment in writing or otherwise of any estate or interest in lands, or in goods, or things in action, or of rents or profits issuing therefrom, and every charge upon lands, goods, or things in action, or upon the rents or profits thereof, made with the intent to delay, hinder, or defraud creditors or other persons of their lawful suits, damages, forfeitures, debts or demands, and every bond or other evidence of debt given, suits commenced, decree or judgment suffered with the like intent, as against the person hindered, delayed or defrauded, shall be void.

Certain conveyances, etc., void against heirs, etc.

(1018.) SEC. 9. Every conveyance, charge, instrument or proceeding declared to be void by the provisions of this act, as against creditors and purchasers, shall be equally void as against the heirs, successors, personal representatives or assigns of such creditors or purchasers.

Instruments may be signed by agent.

(1019.) SEC. 10. Every instrument required by the provisions of this act to be subscribed by any party, may be subscribed by the lawful agent of such party.

TITLE XVI.

OF THE DOMESTIC RELATIONS.

CHAPTER I. Of property rights of married persons.
CHAPTER II. Of guardians.
CHAPTER III. Of minors.
CHAPTER IV. Of masters and apprentices.

CHAPTER I.

OF PROPERTY RIGHTS OF MARRIED PERSONS.

SECTION.
1020. Separate property.
1021. Parties to actions.
SECTION.
1022. Dower abolished.

An Act concerning the property rights of married persons.

[*Approved February* 16, 1872.]

Separate property.

(1020.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That all property owned by either spouse before marriage, and that acquired afterwards by gift, bequest, devise or descent, with the rents, issues and profits thereof, is the separate property of that spouse by whom the same is so owned or acquired and separate property owned or acquired as specified above, may be held, managed, controlled, transferred and in any manner disposed of by the spouse so owning or acquiring it, without any limitation or restriction by reason of marriage.

Parties to actions.

(1021.) SEC. 2. Either spouse may sue or be sued, plead and be impleaded, or defend and be defended at law.

Dower abolished.

(1022.) SEC. 3. No right of dower shall exist or be allowed in this Territory.

CHAPTER II.

OF GUARDIANS.

SECTION.
1023. The parents are natural guardians.
1024. Guardians may be appointed by will. Probate judge, etc., may appoint guardian.
1025. Children and property in case of divorce.
1026. Property of minors not derived from parents.
1027. If 14 years old minors may select guardians.
1028. Guardians to give bonds and securities.
SECTION.
1029. Inventory, etc., of property. Guardians to have same power as parents.
1030. Sale of minor's property.
1031. Conveyances.
1032. Guardian may be dismissed and another appointed; to report annually.
1033. Effects to be delivered to guardian.
1034. Compensation of guardian.

An Act in relation to guardians.

[*Approved February* 3, 1852.]

(1023.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That the father is the natural guardian of the person or persons of his minor children. If he dies without appointing any guardian, or is incapable of acting, the mother becomes the guardian. The parents are natural guardians.

(1024.) SEC. 2. The natural and actual guardian of any minor child, may by will appoint another guardian for such minor: *Provided*, where both parents are dead, or disqualified to act as guardian, the probate judge or selectmen may appoint one. Guardians may be appointed by will. Probate judge, etc., may appoint guardian.

(1025.) SEC. 3. When a divorce is decreed or obtained, such order in relation to the children and property of the parties, and the maintenance of the wife may be made as shall be deemed right and proper; subsequent changes may be made by the probate court or selectmen, in those respects when circumstances render them expedient. Children and property in case of divorce.

(1026.) SEC. 4. In cases where the minor has property not derived from either parent, a guardian may be appointed by the court or selectmen to manage such property. The father or mother, if deemed a suitable person for that purpose, may be appointed the guardian to take charge of the property of his or her minor child. Property of minors not derived from parents.

If 14 years old minors may select guardians.

(1027.) SEC. 5. If the minor be over the age of fourteen years, and of sound intellect, he may select his own guardian, subject to the appointment of the probate court or selectmen.

Guardians to give bonds and securities.

(1028.) SEC. 6. Guardians must be sworn to the faithful performance of their duties, and give bond and security to be approved by the court or selectmen, and filed in the office of the court of probate.

Inventory, etc., of property; guardians to have the same power as parents.

(1029.) SEC. 7. All property belonging to minors must be inventoried, appraised, and a copy of the appraisement filed in the probate court's office, within twenty days after the guardian shall have been qualified. Guardians of the persons of minors have the same power and control over them that parents would have if living.

Sale of minor's property.

(1030.) SEC. 8. If necessary for the minor's support or education, to dispose of the minor's property, either personal or real, the guardian may do so, by giving general notice ten days previous to said sale; all sales must be under the direction of the probate court, who shall cause the bonds of the guardian to be increased if he shall deem it necessary. The court or selectmen may also direct the postponement of such sale for further notice or consideration, if they are of opinion that the interest of the minor would be promoted thereby. The avails of all such sales shall be accounted for, and the inventory filed in the court of probate's office, and applied under his direction.

Conveyances.

(1031.) SEC. 9. Conveyances of property may be made under the direction of the court by the guardian.

Guardian may be dismissed and another appointed.

(1032.) SEC. 10. A failure to comply with any order of the court or requirement of the selectmen in relation to guardianship, may involve the dismissal of the guardian, and may be deemed a breach of the condition of his bond, for which he shall be liable, and the court may appoint a new guardian, if it shall deem it necessary. Guardians shall account to the court annually on oath, or oftener if required by the court or selectmen.

Guardian must report annually.

Effects to be delivered to new guardian.

(1033.) SEC. 11. Where a new guardian is appointed, the effects of the minor, which are in the hands of his predecessor, are to be delivered up to such new guardian.

Compensation of guardian.

(1034.) SEC. 12. Guardians shall receive such compensation as the court may from time to time allow. The amount allowed, and the service for which the allowance was made, must be entered upon the records of the court.

CHAPTER III.

OF MINORS.

SECTION.
1035. Period of minority.
1036. Contracts of minors.
1037. Cases in which minors cannot disaffirm.
SECTION.
1038. Contracts for personal services of minors.

An Act in relation to minors.

[*Approved February* 6, 1852.]

(1035.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That the period of minority extends in males to the age of twenty-one years; and in females to that of eighteen years; but all minors obtain their majority by marriage. **Period of minority.**

(1036.) SEC. 2. A minor is bound, not only by contracts for necessaries, but also by his other contracts, unless he disaffirms them within a reasonable time after he attains his majority, and restores to the other party all money or property received by him by virtue of said contract, and remaining within his control at any time after attaining his majority. **Contracts of minors.**

(1037.) SEC. 3. No contract can be thus disaffirmed in cases where on account of the minor's own misrepresentations as to his majority, or from his having engaged in business as adult, the other party had good reason to believe the minor capable of contracting. **Cases in which minors cannot disaffirm.**

(1038.) SEC. 4. When a contract for the personal services of a minor has been made with him alone, and those services are afterwards performed, payment made therefor to such minor in accordance with the terms of the contract, is a full satisfaction for those services, and the parent or guardian cannot recover therefor a second time. **Contracts for the personal services of minors.**

CHAPTER IV.

OF MASTER AND APPRENTICES.

SECTION.
1039. Minor child may be bound. Indenture. Idle, vicious or vagrant children.
1040. Selectmen may bind out children.
1041. Power of master.
1042. Who must watch over interests of the minor.
1043. Ill treatment deemed sufficient cause of discharge of apprentice.
1044. Duty of master; duty of apprentice; master may discharge apprentice for bad conduct.

SECTION.
1045. Death or removal dissolves the indenture.
1046. Agreements in Territories and States.
1047. Guardianship of minor child.
1048. Indentures must be strictly observed.
1049. Minor child to be sent to school.

An Act concerning masters and apprentices.

[*Approved February* 7, 1852.]

Any minor child may be bound.

Indenture.

Idle, vicious, or vagrant children.

(1039.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That any minor child may be bound to service until the attainment of the age of legal majority; such binding must be by written indenture, specifying the terms of agreement, age of the minor (if known), and shall moreover be signed by the minor if over twelve years of age. Nothing herein shall be so construed as to prevent the selectmen or probate court from binding out any idle, vicious or vagrant minor child without his or her consent, or the consent of the parent or guardian of such minor child, if such parent or guardian neglects, refuses, or otherwise fails in properly controlling the actions and education of such minor, and does not train him or her up in some useful avocation.

Selectmen may bind out minor children:

(1040.) SEC. 2. It is hereby made the duty of selectmen to look after, and take notice of all such cases, and when they shall find the minor child incorrigible, and the parents unable, unwilling, or negligent as hereinbefore mentioned, bind him or her out to some suitable person to be trained to some useful vocation.

Powers of master.

(1041.) SEC. 3. The powers, liabilities and duties of master, and the rights of the apprentice, are the same as those of parent and child respectively, except as to inheritance, and except as is otherwise provided by law.

(1042.) SEC. 4. The parent, guardian, or officer, by whose act or consent any minor is thus bound, must watch over the interest of the minor so bound, and take measures for his or her relief, whenever circumstances shall justify or the true interest of the minor child shall require it.

Who must watch over the interests of the minor.

(1043.) SEC. 5. If the master shall ill treat his apprentice, or in any manner palpably fail in the discharge of his duties in regard to said apprentice, the said apprentice may be discharged from further service, and may moreover recover damages, and compensation for services.

Ill treatment deemed sufficient cause of discharge of apprentice.

(1044.) SEC. 6. It shall be the duty of the master to correct and teach such minor child to observe the principles of good order and industry, and train him or her to some useful avocation. And it is hereby made the duty of such minor child to observe obedience to, and respect for, the requirements of the master. But if the apprentice bound as aforesaid, shall refuse to serve according to the terms of the indenture, or grossly misbehave, and the master shall be incapable or unable to influence or control such apprentice, he may be discharged from further obligations or liability, at the discretion of the court; and in the event of a dissolution, the apprentice shall receive such allowance for the service previously rendered as may be considered just under the circumstances of the case.

Duty of master.

Duty of apprentice.

Masters may discharge apprentices for bad conduct.

(1045.) SEC. 7. The death of the master, or his removal from the Territory, works a dissolution of the indentures, unless otherwise provided therein, or unless the apprentice shall elect to continue in his service.

Death or removal dissolves the indenture.

(1046.) SEC. 8. Any person, apprentice or servant, who shall have so elected, or agreed to render service in any other Territory, State or country, shall come under the same regulations and requirements as herein provided, all such agreements or indentures for services being held as inviolate and binding, as if they had been entered into, and executed within this Territory.

Agreements in other Territories and States.

(1047.) SEC. 9. If from habitual intemperance, and vicious, and brutal conduct, or from vicious, brutal, and criminal conduct towards said minor child, the parent of the same shall be considered an unsuitable person to retain the guardianship, or control the education of said child, the judge of probate court or selectmen may appoint a suitable person to be the guardian of such child, and may,

Guardianship of minor child.

if deemed expedient, also cause said minor child to be bound as an apprentice to some suitable person, during his or her minority. Nothing herein shall be so construed as to take such minor child, if either the father or mother be a proper guardian.

Indentures must be strictly observed.

(1048.) SEC. 10. The strict observance of the provisions of the indentures on the part of the master and apprentice must be considered essential to entitle either party to the benefits arising under the provisions of this act, and the selectmen or the probate court shall enquire into such observance before either awarding compensation or damages, or otherwise discharging or releasing either party from the requirements of such indentures, or the provisions of law in such cases made and provided. Nothing herein contained shall be so construed as to effect a release of either party from service or obligation, as the case may be, where the agreement or indentures have been entered into in any foreign state or country, or in this Territory for a longer period.

Minor child to be sent to school.

(1049.) SEC. 11. The master shall send the said minor child to school between the ages of six and sixteen, three months in each year if there be a school in the district or vicinity; and at all times, and in all cases the master shall clothe the minor child in a comfortable and becoming manner.

TITLE XVII.

OF COURTS AND JUDICIAL OFFICERS.

CHAPTER I. Of the supreme court.
CHAPTER II. Of the district courts.
CHAPTER III. Of courts held by justices of the peace.

CHAPTER I.

OF THE SUPREME COURT.

SECTION.
1050. In what cases an appeal may be taken; how made.
1051. Clerk to make out and transmit record.
1052. When an appeal will not operate as a stay.
1053. In criminal cases less than capital, how appeal taken; how in capital cases.

SECTION.
1054. Notice of appeal to be given.
1055. In what time appeal must be taken.
1056. Hearing to be upon record; what constitutes the record.
1057. Judgment of supreme court.
1058. Concerning costs.
1059. When adjourned term held, what cases heard.

Providing for appeals to the supreme court. (1)

[*Approved January* 18, 1861.]

In what cases an appeal may be taken.

(1050.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That hereafter whenever any final order, judgment or decree is made or rendered in the district court of the Territory, the party aggrieved may have the same reviewed in the supreme court on appeal, by obtaining, from the clerk of the court making or rendering such order, judgment or decree, a complete transcript of the record of the case, which shall be filed with the clerk of the supreme court.

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(1) The mode and manner of appeals in civil cases is fully provided for in the civil practice act, but as this act includes appeals in criminal cases, it is embodied as a whole in this compilation.

Clerk to make out and transmit record.

(1051.) SEC. 2. On application for such record and tender of the legal fees therefor, if the clerk shall refuse or neglect to make out and deliver or transmit the same, he shall be punished for contempt and be disqualified to act as clerk.

When an appeal will not operate as a stay.

(1052.) SEC. 3. In case the order, judgment or decree in the district court is for the payment of money, the appeal to the supreme court shall not operate as a stay of execution, unless the party appealing shall enter into a *supersedeas* bond in double the amount of the money adjudged to be paid, with sureties to be approved by the clerk or court, and conditioned to pay the amount awarded against the appellant in the supreme court, and all costs that may accrue by reason of such appeal.

In criminal cases less than capital, how appeal taken.

(1053.) SEC. 4. From judgments in criminal cases less than capital, the defendant may appeal by entering into bonds, with sureties to be approved in like manner, in such sum as the district court or judge may determine, conditioned to abide the judgment of the supreme court; and in capital cases, the defendant may also appeal, as provided in the first section for civil cases, but must remain committed, unless the judgment is reversed and a discharge ordered by the supreme court.

How in capital cases.

Notice of appeal to be given.

(1054.) SEC. 5. In all cases of appeal, as herein provided, the party appealing in civil cases shall serve a written notice upon the adverse party, or the attorneys of record in the case, sixty days before the sitting of the supreme court (unless such notice be waived), that an appeal has been taken; and, in criminal cases, a similar notice shall be served upon the attorney who prosecuted the defendant in the district court.

In what time appeal must be taken.

(1055.) SEC. 6. No appeal shall be taken to the supreme court, unless within two years after the rendition of the judgment in civil cases; or, in case the person entitled to such appeal be an infant or of unsound mind, or imprisoned, then within three years after such disability ceases, except the party appealing be a non-resident, and, if so, within four years; and, in criminal cases; the appeal must be taken to the next supreme court after the judgment, provided there is sufficient time after the rendition of judgment; if not, then the next supreme court succeeding.

Hearing to be upon record; what constitutes the record.

(1056.) SEC. 7. The hearing of the supreme court shall be upon the record and argument of counsel; and the district court is hereby required to sign all bills of exceptions taken to its rulings, decisions or charge to the jury, which shall be incorporated into and constitute part of the record of the cause; and, upon refusal to sign such bills of exceptions, the same may be signed by two spectators, under oath, or two disinterested attorneys; and when so signed shall be of equal validity as if signed by the judge.

Judgment of supreme court.

(1057.) SEC. 8. When the judgment, final order or decree shall be reversed, either in whole or in part, the supreme court may render such judgment as the court below should have rendered, or remand the cause to the court below to proceed according to the decision of the supreme court; and execution may issue from the supreme court, or a special mandate to the clerk of the court below to proceed upon the judgment as the supreme court may direct.

Concerning costs.

(1058.) SEC. 9. When a judgment, order or decree is reversed, the appellant shall recover his cost; and when reversed in part and affirmed in part, the cost shall be equally divided between the parties.

When adjourned term held, what cases heard.

(1059.) SEC. 10. In case the supreme court at any regular session adjourn the term of said court, all cases tried and determined in the district court may be removed to such adjourned term in the same manner as provided in this act for taking cases to the regular term, and may be heard and determined at such adjourned term of said court.

CHAPTER II.

OF THE DISTRICT COURTS.

SECTION.
1060. Defines the judicial districts.
1061. Jurisdiction of district courts.
1062. Record of court to be kept.
1063. Judges to report to Legislature.
1064. Decisions, etc., to be filed with clerk.
1065. Clerk to keep register.
1066. Court may adopt rules.
1067. Proceedings to be public.
1068. Interest, etc., no disqualification of judge.
1069. Contempts, etc., may be punished.
1070. Any person may act as his own counsel, or any person of good moral character may be employed.

SECTION.
1071. Counsel not permitted to use improper language.
1072. Executive officers may arrest without process.
1073. Qualifications of jurors.
1074. Who are exempt.
1075. How venire issued.
1076. Oath and charge to grand jury.
1077. Manner of impaneling petit jury.
1078. Jurors failing to appear after service, may be fined.
1079. Clerk to make certificate to jurors.
1080. Number of grand jury.

An Act defining the judicial districts for the Territory of Utah.

[*Approved December* 27, 1865.]

Defines the judicial districts.

(1060.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That Millard, Sevier, Sanpete, Juab, Utah and Wasatch counties are the First Judicial District; that Kane, Washington, Iron, Beaver and Piute Counties are the Second Judicial District; and that Salt Lake, Tooele, Summit, Davis, Morgan, Weber, Box Elder, Cache and Rich Counties are the Third Judicial District.

An Act in relation to the judiciary.

[*Approved January* 19, 1855.]

Jurisdiction of district courts.

(1061.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That the district courts shall exercise original jurisdiction, both in civil and criminal cases, when not otherwise provided by law. They shall also have a general supervision over all inferior courts, to prevent and correct abuses where no other remedy is provided. (1)

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(1) See sec. 3 of an act of Congress entitled "An act in relation to courts and judicial officers in the Territory of Utah," approved June 23, 1874.

(1062.) SEC. 3. The clerk of each district or county shall keep a record of the proceedings of the court, under the direction of the judge. He shall, from time to time, read over all entries therein in open court, which, when correct, shall be signed by the judge. Entries made in vacation shall be read and approved at the next term of the court, and may be amended, or any entries therein expunged at any time during the term of the court at which it is made, or before it is signed by the judge as aforesaid; but entries made, approved, and signed by the judge, cannot be altered only to correct an evident mistake.

Record of the court to be kept.

(1063.) SEC. 4. The judges of the district courts, respectively, shall report to the Legislature at each regular session thereof, all omissions, discrepancies, or other evident imperfections of the law, which have fallen under their observation.

Judges to report to Legislature.

(1064.) SEC. 5. The judges of the court may report their own decisions, or they may appoint a reporter who shall hold his office at the pleasure of the court, and all decisions or opinions, and all questions received on appeal, as well as motions, collateral questions, and points of practice, as they may think of sufficient importance, shall be reduced to writing and filed with the clerk of the court.

Decisions, etc., to be filed with clerk.

(1065.) SEC. 6. Each of the clerks must keep a complete register of all proceedings of the court, with an index to the same; and generally they must perform all the other duties ordinarily pertaining to their offices.

Clerk to keep register.

(1066.) SEC. 7. The said courts may adopt all such rules as they may deem expedient, consistent with the law, the prime object of which shall be to carry out the purposes of the statutes, and to subserve the ends of justice, dispensing with all needless forms, and disregarding and abridging all technical pleadings with a view to the attainment of justice; all technical forms of actions and pleadings are hereby abolished.

Court may adopt rules.

SECS. 8 to 16 inclusive. (1)

(1067.) SEC. 17. All judicial proceedings must be public unless otherwise specially provided by statute, or otherwise agreed upon by the parties.

To be public.

(1068.) SEC. 18. The judge or justice shall not be disqualified in consequence of interest, consanguinity, or

Interest, etc., no disqualification of the judge.

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(1) These sections are superseded by provisions of the practice act.

otherwise, unless objected to previous to the parties joining issue, and introducing testimony.

Contempts, etc., may be punished by fine or imprisonment.

(1069.) SEC. 19. The court shall have power to punish by fine, or imprisonment, or both, at their discretion, for contempts, or any willful disturbing, calculated to interrupt the due course of its official proceedings, or which may tend to impair the respect due to its authority. (1)

An Act for the regulation of attorneys.

[*Approved February* 18, 1852.]

Any person may act as his own counsel.

Any person of good moral character may be employed as counsel.

(1070.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That the right of being heard by self or counsel shall not be denied to any person, claiming a trial as plaintiff or defendant, in any court in this Territory; and it shall be the duty of all judges of courts in this Territory to grant a hearing as counsel to any person of good moral character, chosen by any person or persons to prosecute or defend a case, in which he, she, or they, are a party.

SEC. 2. (2)

Counsel not permitted to use improper language.

Judge may prohibit the counsel from pleading in any court.

Counsel may be fined or imprisoned.

(1071.) SEC. 3. It shall be the duty of the judges of all courts in this Territory, to forbid and prevent all indecent and exciting language and behavior in their courts; and in case of a rebuke to counsel being disregarded, and resented by said counsel, it shall be the duty of the judge giving such rebuke, to nullify the right to plead of such counsel, and to take measures to prohibit him from being heard as counsel in any court of this Territory, until such time as satisfaction has been given for his good conduct in future. And it shall further be his duty to impose a fine not exceeding one hundred dollars, on such counsel as he may deem just; and he may commit said counsel to prison during the term of the court then being holden.

Executive officers may arrest without process.

(1072.) SEC. 4. It shall be the duty of the executive officers of all courts in this Territory, to arrest without process, and put in safe keeping all persons, whether counsel or other officers of courts, or persons within the hearing of such courts, who shall in any way behave indecently or riotously, or use indecent, riotous or exciting language, subject to the release or action of the court, in which such arrest is made; and such executive officers may call for such assistance as may be necessary in making such arrest, and for the safe keeping of such person or persons so offending.

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(1) See page 120.

(2) Repealed by act of Feb. 20, 1874.

SEC. 5. (1)

An Act prescribing certain qualifications necessary to enable a person to be eligible to hold office, vote, or serve as a juror. (2)

[*Approved January* 21, 1859.]

(1073.) SEC. 4. A person is not eligible to serve and therefore shall not serve on any grand or petit jury in any court in this Territory unless he is a male citizen of the United States, is over twenty-one years of age, is of reputed sound mind and discretion, is not so disabled in body as to be unable to serve, has not been convicted of any capital or infamous crime, owns taxable property and pays taxes in this Territory, and has been a constant resident therein during the year last preceding his being selected to serve as a juror. (3)

Qualification of jurors.

An Act defining who are exempt from serving on juries, and prescribing the mode of procuring grand and petit jurors and juries for district courts, and for other purposes.

[*Approved January* 21, 1859.]

(1074.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That members and officers of the Legislative Assembly, judges of probate courts, selectmen, county treasurers, clerks of the supreme, district, probate and county courts, the Territorial marshal, deputy marshals, sheriffs, deputy sheriffs, constables, attorneys and counselors at law, persons at the time engaged in teaching school, ferrymen, millers, physicians, surgeons and editors of newspapers and other periodical publications are exempt from serving either as grand or petit jurors.

Who are exempt from serving on jury.

SECS. 2 to 7 inclusive. (4)

(1075.) SEC. 8. The officer having the writ and jury list, or lists, in charge, as hereinbefore provided, shall, immediately upon his reception of said list, or lists, proceed

How venire served.

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(1) Repealed by act of Feb. 20, 1874.

(2) The other sections of this act refer to the qualifications of officers and electors, and will be found under those heads. See p. 87.

(3) By act of Congress, six months residence in the district is necessary. And see sec. (42.)

(4) Superseded by act of Congress approved June 23, 1874.

to summon the persons named on said list, or lists, to attend said court, specifying the time and place of its sitting; which summons shall be served by giving each person a written notice, or by leaving a copy of the summons at his residence in care of some person of suitable age and discretion.

SECS. 9 and 10. (1)

Oath and charge to grand jury.

(1076.) SEC. 11. After a grand jury is impaneled, sworn or affirmed and charged by the court, said court shall appoint one of their number to be their foreman; and said foreman shall have power to swear or affirm all witnesses to testify before said grand jury; and shall, when the grand jury or any twelve of them have, upon to them good and sufficient evidence, found a bill of indictment, endorse thereon the words, to wit—"A True Bill," and officially sign his name to said endorsement, and also note or cause to be noted on the bill of indictment the name or names of the witnesses upon whose evidence it was found.

Manner of impaneling petit jury.

(1077.) SEC. 12. The clerk of the district court shall write upon separate tickets the names of the persons returned to serve as petit jurors, shall so fold said tickets that their names thereon do not appear, shall deposit them in a box or other safe place of deposit, and, when ordered by the court, draw from said box or place twelve names; and the persons whose names are drawn shall constitute a petit jury, except such as are legally rejected; and, in case of such rejection, said clerk shall continue to draw until said petit jury is complete; * * * (2)

SECS. 13 and 14. (3)

Jurors failing to appear after service may be fined.

(1078.) SEC. 15. If any person fails to appear as a grand or petit juror when lawfully summoned, or if a marshal, or his deputy, or any clerk of the district or county court, or any sheriff, or his deputy, fails to fulfill the duties enjoined upon him in this act, without having a reasonable excuse, he shall be considered guilty of contempt, and may be fined for each offense, for the use of the county in which the defendant resides, in any sum not exceeding fifty dollars, unless, at or before the next term of said district court, good cause be shown for such failure: *Provided*, that the oath or affirmation of any such delinquent shall at all times be received as competent evidence in his favor.

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(1) Superseded by act of Congress approved June 23, 1874.

(2) This part of the section is superseded by the provisions of sec. 4 of an act of Congress approved June 23, 1874, see p. 55.

(3) Superseded by provisions of an act of Congress approved June 23, 1874.

(1079.) SEC. 16. It shall be the duty of the clerk of a district court, at the close of each term of said court, to make out and give to each juror a certificate, certifying the number of days attendance of and amount of compensation due to said juror, which certificate, upon being presented to the county court of the county from which said juror was summoned, shall entitle said juror to be allowed and paid by said county, the sum specified in said certificate, as other demands against the county are paid: *Provided,* that no juror shall be paid out of the county treasury for any jury service for which he may have received or be entitled to receive pay for sitting as a juror upon United States business. **Clerk to make certificate to jurors.**

An Act to amend "An act defining who are exempt from serving on juries, and prescribing the mode of procuring grand and petit jurors, and juries for district courts, and for other purposes," approved January 21, 1859.

[*Approved February* 18, 1870.]

SECS. 1, 2 and 3. (1)

(1080.) SEC. 4. The court shall impanel out of the list summoned as grand jurors, fifteen eligible men to serve as a grand jury. **Number of grand jury.**

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(1) Superseded by provisions of an act of Congress approved June 23, 1874.

CHAPTER III.

OF COURTS HELD BY JUSTICES OF THE PEACE.

SECTION.
1081. Duties of the justice of the peace.
1082. Jurisdiction of justices of the peace.
1083. How criminal actions before justices may be commenced.
1084. Justice may issue warrant to be served anywhere in Territory.
1085. How warrant served.
1086. Trial.
1087. Verdict and judgment.
1088. Justice to make out certificate.
SECTION.
1089. Proceeding in case of appeal.
1090. Jurisdiction of justices extends throughout their respective counties.
1091. Fees of jury.
1092. Records, dockets, etc., to be delivered to successor in office.
1093. Justice may depute person to act as constable.
1094. Vexatious suits how disposed of.

An Act in relation to justices of the peace.

[*Approved February* 4, 1852.]

SECS. 1 and 2. (1)

Duties of justice of the peace.

(1081.) SEC. 3. It shall be the duty of every justice of the peace to examine strictly and faithfully into the merits and demerits of all civil and criminal cases which may come before him, and execute justice without respect to persons, or favor, or the technicalities of the law; preserve the public peace; sit in judgment in all cases referred to him; and keep a true record of all proceedings laid before him; and, in case of appeal, transmit a copy of the same to the clerk of the court to which the appeal is made, within five days from the time the appeal is taken.

Jurisdiction of justices of the peace.

(1082.) SEC. 4. Justices of the peace have jurisdiction over all cases where the amount in controversy does not exceed one hundred dollars; and when the amount claimed exceeds that sum, but by fair credit, may be reduced to that amount, justices may decide cases without process; but if it shall become necessary to enforce such decisions, they shall enter such cases so decided upon their dockets, and proceed as in other cases. Justices of the peace in their respective counties have jurisdiction of and may try, hear, and determine public offenses, where the punishment imposed by law does not exceed one hundred dollars fine, or imprisonment does not exceed six months, or when the punishment is by both such fine and imprisonment. (1)

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(1) These sections refer to the election and qualification of justices of the peace, and will be found under the head of precinct officers. See secs. (262.) and (263.)

How criminal actions before justices of the peace are commenced.

(1083.) SEC. 5. Criminal actions for the commission of public offenses may be commenced before a justice of the peace by information subscribed and sworn to and filed with the justice; the justice must file such information and note the time of filing. (2)

Justice may issue warrant to be served anywhere in the Territory.

(1084.) SEC. 6. Immediately upon the filing of such information, the justice may in his discretion issue his warrant, directed to any sheriff, constable, or peace officer, for the arrest of the defendant, and such warrant may be served in any county or district within the Territory. (3)

How warrant served.

(1085.) SEC. 7. The officer who receives the warrant must serve the same by arresting the defendant, if in his power, and bring him without unnecessary delay before the justice who issued the same.

Trial.

(1086.) SEC. 8. If the defendant do not demand a trial by jury, the magistrate must proceed to try the issue; in case a jury be demanded, the justice shall cause a jury of six men having the qualifications of jurors, inhabitants of the county, to be impaneled, who, being duly sworn or affirmed, shall constitute the jury. No challenge to the panel is allowed; but the prosecutor and defendant may each challenge for cause; and the defendant may be allowed the pre-emptory challenge of three jurors; a further number of jurors shall be summoned to fill up, as the jury shall be exhausted by challenges.

Verdict and judgment.

(1087.) SEC. 9. The verdict of the jury shall be entered upon the magistrate's docket, and the magistrate must render judgment thereon of fine, or imprisonment, or both, as the case may require; and when a fine is assessed, the justice may direct that the defendant be also imprisoned until the fine is satisfied: *Provided*, that the magistrate may hire out said defendant to service until the fine is paid. If the defendant be acquitted by either the justice or jury, he must be immediately discharged.

Justice to make out certificate.

(1088.) SEC. 10. Within twenty days after any such conviction, the justice shall make out a certificate in which he shall briefly state the offense charged, the conviction and judgment thereon, and, if any fine has been collected, the amount thereof, and file the same in the judge of probate's office. All fines collected either by justice, sheriff, constable or other officer, shall be paid into the county treasury within ninety days after the same have been collected.

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(1) The jurisdiction of justices of the peace in civil cases is extended to sums less than three hundred dollars, see page 54.

(2) See sec. (2302.)

(3) See sec. (2303.)

Proceedings in case of appeal.

(1089.) SEC. 11. Upon the affidavit being filed, in which the alleged error of the proceedings is stated, and that the affiant verily believes injustice has been done, the justice shall grant an appeal to the court of probate of the county, and shall take a written undertaking from the defendant, with two or more sureties, and shall cause all material witnesses to enter into recognizance to appear at the time and place of trial, and return all such papers, together with a certified copy of entries on his docket, on or before the first term of the probate court next to be holden, which return and papers shall be filed in the clerk's office of the probate court. (1)

SEC. 12. (2)

Jurisdiction of justices extends throughout their respective counties.

(1090.) SEC. 13. The jurisdiction of justices extends to the limits of their respective counties, and within that limit it extends to all civil cases (except where the question of title to, and boundaries of land may arise) when the amount in controversy does not exceed one hundred dollars, and by the wish and consent of parties may be extended to any amount: *Provided,* That where the amount in controversy exceeds one hundred dollars, the justice shall have the same powers as other courts of arbitration, and shall have power to enforce his decision thereon, which decision shall be an end of controversy; but all suits shall be brought in the precinct where the defendant resides: *Provided,* if payment is agreed to be made in any particular place, the suit may be brought in that place, if within the county: *And provided also,* if the defendant does not reside in the Territory nor county, suit may be commenced in any place in this Territory, wherever he may be found. (3)

SEC. 14. (4)

Fees of jury.

(1091.) SEC. 15. Before any party before a justice is entitled to a jury, the party demanding the jury shall deposit the fees to which they will be entitled; and the same shall be included in the judgment as part of the costs to be received, if adjudged against the party who did not advance them.

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(1) Appeal must be to district court, see page 54.

(2) Superseded by act of Congress.

(3) Jurisdiction of justices of the peace in civil cases is extended to all cases when the sum claimed is less than three hundred dollars.

(4) Superseded by the provisions of the civil practice act.

(1092.) SEC. 16. All records, dockets, and papers pertaining to the office of any justice of the peace, must be transmitted to his successor in office; and such successor may issue execution, and act in any case so transmitted, the same as if the case had been commenced before him; and in case of any disability or necessary absence of the justice at the time fixed for trial or proceeding, any other justice of the precinct may, at his request, attend and transact the business for him without any transfer of the business to another office.

Records, dockets, etc., to be delivered to successor in office.

(1093.) SEC. 17. The justice may in writing depute any discreet person to act as constable, when no constable is at hand, and the nature of the business shall require immediate attention.

Justice may depute person to act as constable.

SEC. 18. (1)

(1094.) SEC. 19. It shall be the duty of each and every justice of the peace to punish by fine not exceeding one hundred dollars, at his discretion, any person or persons who shall bring before him a vexatious lawsuit through malice, or private pique, against the defendant; all fines so collected shall be paid into the county treasury.

Vexatious suits, how disposed of.

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(1) Repealed by act approved Feb. 20, 1868.

TITLE XVIII.

OF THE LIMITATION OF CIVIL ACTIONS.

CHAPTER I. Time of commencing actions in general.
CHAPTER II. The time of commencing actions for the recovery of real property.
CHAPTER III. Time of commencing actions other than for the recovery of real property.
CHAPTER IV. General provisions as to the time of commencing actions.

CHAPTER I.

TIME OF COMMENCING ACTIONS IN GENERAL.

SECTION.
1095. When time commences to run.
1096. Causes of action already accrued. Proviso.

An Act limiting the time of commencing civil actions.

[*Approved February* 16, 1872.]

When time commences to run.

(1095.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That civil actions can only be commenced within the period prescribed in this act, after the cause of action shall have accrued, except where a different limitation is prescribed by statute.

Causes of action already accrued.

Proviso.

(1096.) SEC. 2. When a cause of action has already accrued, the party entitled and those claiming under him shall have one year after the passage of this act in which to commence an action: *Provided,* that in every instance a party shall be entitled to the full time limited for the commencement of the action.

CHAPTER II.

THE TIME OF COMMENCING ACTIONS FOR THE RECOVERY OF REAL PROPERTY.

SECTION.
1097. Suits on behalf of the people; right accruing within seven years; or rents received.
1098. Suits for real property.
1099. Suits for rights growing out of real property.
1100. Presumption of possession. Adverse possession.
1101. Effect of color of title. Possession of tract divided into lots.
SECTION.
1102. Adverse possession under color of title.
1103. Claim of title without color.
1104. Adverse possession without color of title.
1105. Possession by tenant.
1106. Effect of a descent cast.
1107. Disabilities; effect of; expires after two years.

Suits on behalf of the people.

(1097.) SEC. 3. The people of this Territory will not sue any person for or in respect to any real property, or the issues and profits thereof, by reason of the right or title of the people to the same, unless,

Right accruing within seven years.

First—Such right or title shall have accrued within seven years before any action or other proceeding for the same shall be commenced; or unless,

Or rents received.

Second—The people, or those for whom they claim, shall have received the rents and profits of such real property or some part thereof within the space of seven years.

Suits for real property.

(1098.) SEC. 4. No action for the recovery of real property, or for recovery of the possession thereof, shall be maintained, unless it appear that the plaintiff, his ancestor, grantor or predecessor was seized or possessed of the premises in question, within seven years before the commencement of such action.

Suits for rights growing out real property.

(1099.) SEC. 5. No cause of action or defense to an action founded upon the title to real property, or to rents or profits out of the same shall be effectual, unless it appear that the person prosecuting the action or making the defense, or under whose title the action is prosecuted, or the defense is made, or the ancestor, predecessor, or grantor of such person was seized or possessed of the premises in question, within seven years before the commencement of the act, in respect to which such action is prosecuted or defense made.

Presumption of possession. (1100.) SEC. 6. In every action for the recovery of real property, or the possession thereof the person establishing a legal title to the property shall be presumed to have been possessed thereof, within the time prescribed by law, and the occupation of the property by any other person shall be deemed to have been under and in subordination to the legal title, unless it appear that the property has been held and possessed adversely to such legal title for ten years before the commencement of the action. Adverse possession.

Effect of color of title. (1101.) SEC. 7. Whenever it shall appear that the occupant or those under whom he claims, entered into the possession of the property, under claim of title exclusive of any other right, founding such claim upon a written instrument, as being a conveyance of the property in question or upon the decree or judgment of a competent court, and that there has been a continued occupation and possession of the property included in such instrument, decree or judgment, or of some part of the property under such claim, for five years, the property so included shall be deemed to have been held adversely, except that where the property so included consist of a tract divided into lots, the possession of one lot shall not be deemed a possession of any other lot of the same tract. Possession of tract divided into lots.

Adverse possession under color of title. (1102.) SEC. 8. For the purpose of constituting an adverse possession by any person claiming a title founded upon a written instrument, or a judgment or decree, land shall be deemed to have been possessed and occupied in the following cases:

Cultivation. *First*—Where it has been usually cultivated and improved.

Enclosure. *Second*—Where it has been protected by a substantial enclosure.

Unenclosed lands. *Third*—Where (although not enclosed) it has been used for the supply of fuel, or of fencing timber, for the purposes of husbandry, or for the use of pasturage, or for the ordinary use of the occupant.

When partially enclosed. *Fourth*—When a known lot or single farm has been partly improved, the portion of such farm or lot that may have been left not cleared, or not enclosed according to the usual course and custom of the adjoining county, shall be deemed to have been occupied for the same length of time as the part improved and cultivated.

Claim of title without color. (1103.) SEC. 9. When it shall appear that there has been an actual continued occupation of land under claim of title, exclusive of any other right, but not founded upon a written instrument or a judgment or decree, the property so actually occupied and no other shall be deemed to have been held adversely.

Adverse possession without color of title.

(1104.) SEC. 10. For the purpose of constituting an adverse possession by a person claiming title not founded upon a written instrument, judgment or decree, land shall be deemed to have been possessed and occupied in the following cases only :

First—When protected by a substantial enclosure. Enclosure.

Second—When it has been usually cultivated or improved. Cultivation.

Third—Where labor or money has been expended upon dams, canals, embankments, aqueducts or otherwise, for the purpose of irrigating said land, amounting to the sum of five dollars per acre. Improvement.

Possession by tenant.

(1105.) SEC. 11. Whenever the relation of landlord and tenant shall have existed between any persons, the possession of the tenant shall be deemed the possession of the landlord, until the expiration of five years from the termination of the tenancy, or where there has been no written lease until the expiration of five years from the time of the last payment of rent, notwithstanding that such tenant may have acquired another title, or may have claimed to hold adversely to his landlord; but such presumptions shall not be made after the periods herein limited.

Effect of a descent cast.

(1106.) SEC. 12. The right of a person to the possession of any real property shall not be impaired or affected by a descent cast in consequence of the death of a person in possession of such property.

Disabilities.

(1107.) SEC. 13. If a person entitled to commence any action for the recovery of real property, or for the recovery of the possession thereof, or to make any entry or defense founded on the title to real property, or to rents or services out of the same, be at the time such title shall first descend or accrue, either,

First—Within age of majority, or, Minority.

Second—Insane, or, Insanity.

Third—Imprisoned on a criminal charge, or in execution upon conviction of a criminal offense, for a term less than for life, or, Imprisonment.

Fourth—A married woman, and her husband be a necessary party with her in commencing such action or making such entry or defense. Coverture.

Effect of.

The time during which such disability shall continue shall not be deemed any portion of the time in this act limited for the commencement of such actions, or the making of such entry or defense, but such action may be commenced or entry or defense made within the period of two years after such disability shall cease, or after the death of the person entitled, who shall die under such disability, but such action shall not be commenced or entry or defense made after that period.

Expires after two years.

CHAPTER III.

TIME OF COMMENCING ACTIONS OTHER THAN FOR THE RECOVERY OF REAL PROPERTY.

SECTION.
1108. Certain actions to be brought in five years.
1109. Four years.
1110. Three years. Effect of fraud.
1111. Two years. Proviso.

SECTION.
1112. One year.
1113. Open account.
1114. Excepted cases.
1115. Actions by the people.

Five years.

(1108.) SEC. 14. Actions other than those for the recovery of real property can only be commenced as follows: Within five years: An action upon a judgment or decree of any court of the United States, or of any State or Territory within the United States.

Four years.

(1109.) SEC. 15. Within four years: An action upon any contract, obligation or liability, founded upon an instrument of writing, except those mentioned in the preceding section.

Three years.

(1110.) SEC. 16. Within three years: First, an action for a liability created by statute, other than a penalty or forfeiture; Second, an action for trespass upon real property; Third, an action for taking, detaining or injuring any goods or chattels, including actions for the specific recovery of personal property; Fourth, an action for relief on the ground of fraud, the cause of action in such cases not to be

Fraud.

deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud.

(1111.) SEC. 17. Within two years: First, an action upon a contract, obligation or liability, not founded upon an instrument of writing; also on an open account for goods, wares and merchandise, and for any article charged in a store account; Second, an action against a marshal, sheriff, coroner or constable upon a liability incurred by the doing of an act in his official capacity, and in virtue of his office, or by the commission of an official duty, including the non-payment of money collected upon an execution: *Provided*, that such action may be commenced within two years after the expiration of his term of his office. But this section shall not apply to an action for an escape. **Two years.** **Proviso.**

(1112.) SEC. 18. Within one year: First, an action upon a statute for a penalty or forfeiture where the action is given to an individual, or to an individual and the people, except when the statute imposing it prescribes a different limitation; Second, an action for libel, slander, assault, battery or false imprisonment; Third, an action upon a statute for a forfeiture or penalty to the people of this Territory; Fourth, an action against a sheriff or other officer for the escape of a prisoner, arrested or imprisoned upon either criminal or civil process. **One year.**

(1113.) SEC. 19. In an action brought to recover a balance due upon a mutual, open and current account, where there have been reciprocal demands between parties, the cause of action shall be deemed to have accrued from the time of the last item proved in the account on either side. **Open account.**

(1114.) SEC. 20. An action for relief not hereinbefore provided for, must be commenced within four years after the cause of action shall have accrued. **Excepted cases.**

(1115.) SEC. 21. The limitations prescribed in this chapter shall apply to actions brought in the name of the people, or for the benefit of the people in the same manner as to actions brought by private persons. **Actions by the people.**

CHAPTER IV.

GENERAL PROVISIONS AS TO THE TIME OF COMMENCING ACTIONS.

1116. Action when commenced.
1117. Absent or non-resident defendants.
1118. Disabilities.
1119. Death of party before action. After suit brought.
1120. Alien enemy.
1121. Reversal of judgment.
1122. Injunction.
1123. Exception to disability.
1124. Concurrent disabilities.
1125. Actions against direcutors, etc.
1126. Renewal of cause of action.

Action, when commenced.

(1116.) SEC. 22. An action shall be deemed to be commenced within the meaning of this act, when the complaint has been filed in the proper court.

Absent or non-resident defendants.

(1117.) SEC. 23. If, where the cause of action shall accrue against a person, he is out of the Territory, the action may be commenced within the term herein limited, after his return to the Territory; and if after the cause of action shall have accrued, he depart the Territory, the time of his absence shall not be part of the time limited for the commencement of the action.

Disabilities.

(1118.) SEC. 24. If a person entitled to bring an action mentioned in the last preceding chapter, be at the time the cause of action accrued, either,

Minority.

First—Within the age of majority; or,

Insanity.

Second—Insane; or,

Imprisonment.

Third—Imprisoned on a criminal charge, or in execution under the sentence of a criminal court, for a term less than for life; or,

Coverture.

Effect of.

Fourth—A married woman, and her husband be a necessary party with her in commencing such action, the time of such disability shall not be deemed a part of the time limited for the commencement of the action.

Death of party before action.

(1119.) SEC. 25. If a person entitled to bring an action die before the expiration of the time limited for the commencement thereof, and the cause of action survive, an action may be commenced by his representatives after the expiration of that time, and within six months from his death.

After suit brought.

If a person against whom an action may be brought, die before the expiration of the time limited for the commencement thereof, and the cause of action survive, an action may be commenced against his executors or administrators, after the expiration of that time, and within one year after issuing of letters testamentary or of administration.

Alien enemy.

(1120.) SEC. 26. When a person shall be an alien, subject or citizen of a country at war with the United States, the time of the continuance of the war shall not be a part of the period limited for the commencement of the action.

Reversal of judgment.

(1121.) SEC. 27. If an action shall be commenced within the time prescribed therefor, and a judgment therein for the plaintiff be reversed on appeal, the plaintiff, or if he die and the cause of action survive, his heirs or personal representatives may commence a new action within one year after the reversal.

Injunction.

(1122.) SEC. 28. When the commencement of an action is stayed by injunction or a statutory prohibition, the time of the continuance of the injunction or prohibition shall not be a part of the time limited for the commencment of the action.

Exception to disability.

(1123.) SEC. 29. No person shall avail himself of a disability, unless it existed when his right of action accrued.

Concurrent disabilities.

(1124.) SEC. 30. When two or more disabilities shall co-exist at the time the right of action accrued, the limitation shall not attach until they all be removed.

Actions against directors, etc.

(1125.) SEC. 31. The preceding sections of this act shall not affect actions against directors or stockholders to recover a penalty or forfeiture imposed, or to enforce a liability created by law; but such actions must be brought within three years after the discovery, by the aggrieved party, of the facts upon which the penalty or forfeiture attached, or the liability was created.

Renewal of cause of action.

(1126.) SEC. 32. No acknowledgment or promise shall be sufficient evidence of a new or continuing contract, whereby to take the case out of the operations of this statute, unless the same be contained in some writing signed by the party to be charged thereby.

TITLE XIX.

PROVISION CONCERNING ACTIONS AND PROCEEDINGS IN CERTAIN CASES.

CHAPTER I. Of the writ of habeas corpus.
CHAPTER II. Of divorce.
CHAPTER III. Of trespass and damage.
CHAPTER IV. Rules and regulations under townsite act.
CHAPTER V. Mechanic's and laborer's lien.
CHAPTER VI. General lien for common carriers.
CHAPTER VII. Lien of hotel keepers, etc.
CHAPTER VIII. Forcible entry and detainer.
CHAPTER IX. Of the action for causing death by wrongful act, neglect or default.
CHAPTER X. Of mines and mining.

CHAPTER I.

OF THE WRIT OF HABEAS CORPUS.

SECTION.
1127. Petition for writ of habeas corpus; what to contain.
1128. Condition on which writ may be granted.
1129. By what courts may be granted.
1130. Application must be made to nearest judge.
1131. Form of writ.
1132. Disallowance of writ.
1133. Endorsement "by the habeas corpus act."
1134. Writ may be issued without application.
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1136. Mode of serving the writ.

SECTION.
1137. Writ may be served upon any person holding prisoner.
1138. Defendant may be arrested.
1139. Defect of form.
1140. Imprisonment and fine.
1141. Defendant's answer.
1142. Judge may be fined and imprisoned.
1143. Plaintiff to be retained in custody.
1144. Plaintiff may be absent at time of trial.
1145. Proceedings of the court or judge.
1146. Fine and imprisonment of defendant.
1147. Fine of officer.
1148. Sureties in case of bail; witness.
1149. Civil suit for damages.

An Act in relation to writs of habeas corpus.

[*Approved February* 2, 1852.]

Petition for writ of habeas corpus; what to contain.

(1127.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That the petition for a writ of *habeas corpus* must be in writing, and be sworn to, and signed by the prisoner, or some person on his, her, or their behalf, setting forth the facts concerning his, her, or their imprisonment, and in whose custody he, she, or they are detained, and shall be accompanied by a copy of the warrant or warrants of commitment, or an affidavit that the said copy had been demanded of the person or persons in whose custody the prisoner or prisoners are detained, and by him or them refused, or neglected to be given.

Condition on which writ may be granted.

(1128.) Sec. 2. Upon the presentation of the foregoing petition to any court having jurisdiction, the writ of *habeas corpus* shall be awarded, unless it shall appear from the petition itself, or the documents annexed, or the showing of the petitioner, the party so applying would not be entitled to any relief.

By what courts may be granted.

(1129.) Sec. 3. The writ of *habeas corpus* may be allowed by the supreme, district, or probate court, or any judge thereof, and may be served in any part of the Territory.

Application must be made to nearest court or judge.

(1130.) Sec. 4. Application for this writ must be made to the court or judge most convenient in point of distance to the applicant, and the more remote court or judge, if applied to for the writ, may refuse the same, unless a sufficient reason be adduced in the petition for not making application to the more convenient court or judge.

Form of writ.

(1131.) Sec. 5. When the writ shall be awarded, it shall appear under the seal of court issuing the same, or if it be issued by any judge it shall be signed by him, and shall be substantially in the following words, to wit:

Territory of Utah, } To the marshal, or sheriff, officer,
County of—— } or to A. B., (as the case may be),

You are hereby commanded to have the body of C. D., by you detained as alleged, before the court, or before me, E. F., judge, &c., (as the case may be), at———, on———, or forthwith, after being served with this writ, to be dealt with according to law, and to abide such order as the court or judge shall make in the premises, and have you then and there this writ, with a return of your doings in the premises.

Disallowance of writ.

(1132.) Sec. 6. When the writ is disallowed, the court or judge shall cause the reasons of said disallowance to be appended to the petition, and returned to the person applying for the writ.

Endorsement, "By the habeas corpus act."

(1133.) SEC. 7. To the intent that no officer, sheriff, jailor, constable, or other person or persons whatsoever, upon whom such writ shall be served, may pretend ignorance thereof, such writ or copy thereof shall be endorsed with the following words: "By the *Habeas Corpus* Act," and all persons upon whom such writs shall be served, holding said prisoner or prisoners, shall make return of such writ, and shall bring or cause to be brought the body or bodies of such person or persons before the court or judge issuing said writ according to the requirements of the same.

Writ may issue without application.

(1134.) SEC. 8. Whenever the court or judge, authorized to grant this writ, has evidence that any person within the jurisdiction of such court or judge is unjustly imprisoned or restrained of his liberty, it is the duty of each court or judge to issue, or cause to be issued, the writ as aforesaid, though no application be made therefor.

Any person may be appointed to serve writ.

(1135.) SEC. 9. The writ may be served by the officer, or by any other person appointed for that purpose by the court or judge by whom it is issued or allowed. If served by any other person than the officer, he possesses the same power and is liable to the same penalty for a non-performance of his duty as though he were the officer.

Mode of serving writ.

(1136.) SEC. 10. The proper mode of service is by leaving the original writ with the defendant or person holding or detaining such plaintiff or prisoner, and preserving a copy on which to make the return of service.

Writ may be served upon any person holding prisoner.

(1137.) SEC. 11. If the defendant cannot be found, or if he have not the plaintiff in custody, the service shall be made upon any person having the plaintiff in custody, in the manner and with the same effect as though he had been made defendant therein.

Defendant may be arrested.

(1138.) SEC. 12. If the defendant conceal himself, or refuse admittance to the person attempting to serve the writ, or if he attempt wrongfully to carry the person out of the county or Territory after the service of the writ as aforesaid, the officer, or the person who is attempting to serve, or who has served the writ, as above contemplated, is authorized to arrest the defendant, or other person so resisting, and bring him or them together with the plaintiff forthwith before the officer or court before whom the writ is made returnable. In order to make such arrest, the officer or other person having the writ possesses the same power to execute the same as is given to a sheriff for the arrest of a person charged with felony.

(1139.) SEC. 13. The writ of *habeas corpus* must not be disobeyed for any defect of form or mis-description of the plaintiff or defendant: *Provided*, enough is stated to show the meaning and intent of the writ. Service being made in any mode, the defendant must appear at the proper time and place, and answer the petition. He must also bring the body of the plaintiff, or show good cause for not doing so; to get possession of a plaintiff's person, when there is no person appearing to have him in charge or custody, the same power is given to the officer or person having the writ, as is given to the sheriff for the arrest of a person charged with felony. Defect of form.

(1140.) SEC. 14. A willful failure to comply with the requisitions of this act renders the defendant or offending party liable to be attached for a contempt, and to be imprisoned until a compliance is obtained, and also subjects him to a forfeiture of one thousand dollars to the party thereby aggrieved. Imprisonment and fine.

(1141.) SEC 15. The defendant in his answer must state plainly and unequivocally whether he then has, or at any time has had the plaintiff under his control and restraint, and, if so, the cause thereof. If he has transferred him, he must state the fact, and to whom, and the time thereof, as well as the reason or authority therefor. Defendant's answer.

(1142.) SEC. 16. Any judge, whether acting individually or as a member of the court, who wrongfully and willfully refuses to award such writ, whenever proper application for the same is made, shall forfeit and pay the sum of one thousand dollars, which may be recovered by an action of debt for the use of the Territory; and may be imprisoned for a term not exceeding one year. Judge may be fined and imprisoned.

(1143.) SEC. 17. Until the sufficiency of the cause of restraint is determined, the defendant may retain the plaintiff in his custody, and may use all necessary and proper means for that purpose. Plaintiff to be retained in custody.

(1144.) SEC. 18. The plaintiff in writing, or by his attorney, may waive his right to be present at the trial, in which case the proceedings may be had in his absence. The writ in such cases will be modified accordingly. If no sufficient, just, legal cause of detention is shown, the plaintiff must be discharged. Plaintiff may be absent at time of trial.

(1145.) SEC. 19. Upon the return of any writ of *habeas corpus*, the court or judge shall, after having given sufficient notice, proceed in a summary manner to settle the said Proceedings of the court or judge.

facts, by hearing the testimony and arguments, as well of all parties interested civilly, if any there be, as of the prisoner or prisoners, and the person or persons who hold him, her, or them in custody; and shall dispose of the prisoner or prisoners, as the case may require, in all cases where the imprisonment is for a criminal offense, and there is not sufficient cause for discharge; and, although the commitment may have been informally made, or without due authority, or the process may have been executed by a person not duly authorized, the court may make a new commitment, or admit the party to bail, if the case be bailable.

Fine and imprisonment of defendant.

(1146.) SEC. 20. Disobedience to any order of discharge, or attempt to elude the service of the writ of *habeas corpus*, or to avoid the effect thereof, subjects the defendant to a fine of one thousand dollars, and imprisonment for the term of one year; and any person knowingly aiding and abetting in any such act shall be subject to the like punishment.

Fine of officers.

(1147.) SEC. 21. Any officer refusing to deliver a copy of any legal process, by which he detains the plaintiff in custody, to any person who demands such copy for the purpose of taking out a writ of *habeas corpus*, shall forfeit not exceeding two hundred dollars to the person so detained.

Sureties in case of bail; witnesses.

(1148.) SEC. 22. All persons admitted to bail on *habeas corpus* shall enter recognizance, with sufficient sureties, in such sum as the court shall direct, having regard to the circumstances of the plaintiff, and the nature of the offense, conditioned for his, her, or their appearance at the next term of the court to be holden in the county where the offense was committed, or where the same is to be tried. And all material witnesses shall also be required to enter recognizance to appear at the same time and place, and not depart therefrom, without leave. All such papers must be filed in the clerk's office where the same is made returnable.

Civil suit for damages.

(1149.) SEC. 23. The recovery of any penalties incurred by reason of the provisions of this act shall be no bar to a civil suit for damages.

CHAPTER II.

OF DIVORCE.

SECTION.
1150. Courts of probate have jurisdiction in cases of divorce.
1151. Petition for divorce, what to contain; causes for which divorce may be granted.
1152. Husband may obtain divorce.
1153. Decree of divorce may be deferred one year.
1154. Defendant has a right to be present.
1155. Order in relation to children and property.
1156. Rights forfeited by guilty party.
1157. Punishment of persons who seek to separate husband and wife.

An Act in relation to bills of divorce.

[*Approved March* 6, 1852.]

Courts of probate have jurisdiction in cases of divorce.

(1150.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That the court of probate in the county where the plaintiff resides shall have jurisdiction in all cases of divorce and alimony, and of guardianship, and distribution of property connected therewith. (1)

Petition for divorce, what to contain.

(1151.) SEC. 2. The petition for a bill of divorce must be made in writing, upon oath or affirmation, and must state clearly and specifically the causes on account of which the plaintiff seeks relief. If the court is satisfied that the person so applying is a resident of the Territory, or wishes to become one; and that the application is made in sincerity and of her own free will and choice and for the purposes set forth in the petition; then the court may decree a divorce from the bonds of matrimony against the husband; for any of the following causes, to wit:

Causes for which divorce may be granted.

Impotency of the defendant at the time of marriage; adultery committed by defendant subsequent to marriage; willful desertion of his wife by the defendant, or absenting himself without a reasonable cause for more than one year; habitual drunkenness of defendant subsequent to marriage; conviction of defendant for felony subsequent to marriage;

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(1) Sec. 3 of an act of Congress entitled "An act in relation to courts and judicial officers in the Territory of Utah," provides that in divorce cases the defendant may remove the case to the district court before answer filed.

inhuman treatment so as to endanger the life of the defendant's wife; when it shall be made to appear to the satisfaction and conviction of the court, that the parties cannot live in peace and union together, and that their welfare requires a separation.

Husband may obtain divorce.

(1152.) SEC. 3. The husband may in all cases obtain a divorce from his wife for the like causes, and in the same manner as the wife obtains a divorce from her husband.

Decree of divorce may be deferred one year.

(1153.) SEC. 4. Nothing herein contained shall be so construed as to prevent courts of probate from deferring their decree of a divorce, when the same is applied for, to any specified time, not exceeding one year, when it appears to him that a compromise might at a future time be made between the parties. During the time of such deference on the part of the court, the bonds and engagements of matrimony may not be violated by the parties.

Defendant has a right to be present.

(1154.) SEC. 5. The defendant, unless in a case of absence heretofore provided for on his or her part, shall have the right to appear, and shall receive a proper and timely warning thereto; should the defendant fail to appear, the court may, if satisfied that the complainant is the injured party, and his or her claims are just and well grounded, decree a dissolution of the marriage contract between the complainant and defendant.

Order in relation to children and property.

(1155.) SEC. 6. When a divorce is decreed, the court shall make such order in relation to the children and property of the parties, and the maintenance of the wife, and such portion of the children as may be awarded to her, as may be just and equitable: *Provided*, that if the children shall have attained the age of ten years, and possess sound mind, they shall have the privilege to select of their own free will and choice, to which of their parents they will attach themselves: *Provided, further*, that the parties may, with the approval of the court, themselves agree upon the distribution or the property and disposal of the children: *Provided, further*, that when it shall appear to the court at a future time, that it would be for the interest of the parties concerned, that a change should be effected in regard to the former disposal of children or distribution of property, the court shall have power to make such change as will be conducive to the best interests of all parties concerned.

Rights forfeited by guilty party.

(1156.) SEC. 7. When a divorce is decreed, the defendant or guilty party forfeits all rights acquired by marriage.

(1157.) SEC. 8. It shall be the duty of the courts of probate in their respective counties, to punish by fine or imprisonment, or both, at their discretion, any person or persons who shall stir up unwarrantable litigation between husband and wife, or seek to bring about a separation between them. Punishment for persons who seek to separate husband and wife.

CHAPTER III.

OF TRESPASS AND DAMAGE.

SECTION.
1158. Cutting grass on the land of another.
1159. Cutting timber on the land of another.
1160. Property taken publicly.
1161. Crossing enclosure.

SECTION.
1162. Laying down fences.
1163. Action for damages to property.
1164. Infringing upon rights in regard to to water.
1165. Injury of fruit and shade trees.

An Act defining what may be trespass and damage.

[*Approved March* 3, 1852.]

(1158.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That if any person or persons shall cut grass for hay on any land belonging to another person or persons, without his, or their consent, an action for trespass may be had against such offender, and damages recovered by process of law. Cutting grass on the land of another.

(1159.) SEC. 2. If any person shall cut or haul off timber from the possession of another person, without his or their consent, an action of trespass and damage may be had against such offender. Cutting timber on the land of another.

(1160.) SEC. 3. If any person shall take any species of property belonging to another, publicly, but without the consent of the owner, an action of trespass may be had against such offender, and damages recovered by law. Property taken publicly.

(1161.) SEC. 4. If any person shall ride across, or drive a wagon through a field of grain, or over any enclosed Crossing enclosure.

ground, belonging to another person, an action of trespass may be had against such offender, and all damages recovered.

Laying down fence.

(1162.) SEC. 5. If any person shall drive through, or lay down, a fence belonging to another person, and shall fail to put the same up, such offender shall be liable for all damages, to be recovered under an action of trespass.

Action for damages to property.

(1163.) SEC. 6. An action for damages may be sustained for goods stored or property in the possession of another person, that may be damaged while in such possession.

Infringing upon rights in regard to water.

(1164.) SEC. 7. That if any person or persons, after there shall have been a division of water lawfully made in any county or precinct in this Territory, for irrigation or other purposes, shall in any way infringe upon the rights of any person or persons, they shall be liable in an action of trespass to the parties damaged, and liable to be fined at the discretion of the court having jurisdiction.

Injuring fruit and shade trees.

(1165.) SEC. 8. That all damage done to fruit or shade trees in or around enclosures or lots, by careless driving, or the tying up of cattle and horses, or any needless destruction of any such shade or fruit trees, shall be considered a trespass, and such person or persons shall be liable for damage and fine according to the discretion of the court having jurisdiction.

CHAPTER IV.

RULES AND REGULATIONS UNDER TOWNSITE ACT.

SECTION.
1166. Duty of mayor or judge of probate under act of Congress.
1167. Public notice to be given after entry.
1168. Within what time, and where persons claiming land to file their claim.
1169. Proceedings in case of adverse claimants.
1170. Duty of the court; appeal given in case of adverse claimants.
1171. Change of venue.
1172. Authorities to make statement.
1173. Proportionate fee or tender must be made before deed can be demanded.
1174. When lands are taken for public use.
1175. Disposition of unclaimed land.
1176. Application of fund arising from sale of land.
1177. Fees.
1178. Amendment extending time.

An Act prescribing rules and regulations for the execution of the trust arising under an act of Congress entitled "An act for the relief of the inhabitants of cities and towns upon the public lands," approved March 2, 1867.

[*Approved February* 17, 1869.]

Duty of mayor or judge of probate under act of Congress.

(1166.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That when the corporate authorities of any town or city, or the probate judge of any county in this Territory (who for the purpose of this act and of receiving and executing the trust declared by the act of Congress hereinafter mentioned), shall be deemed and is hereby designated as the judge of the county court for such county, in which any town or city may be situated shall have entered at the proper land office, the land or any part of the land settled and occupied as the site of such town, pursuant to and by virtue of the provisions of the act of Congress, entitled "An act for the relief of the inhabitants of cities and towns upon the public lands," "approved March 2d, 1867," and any amendments that may be made thereto, it shall be the duty of such corporate authorities or judge (as the case may be), and they are hereby directed and required to dispose of and convey the title to such land, or to the several blocks, lots, parcels or shares thereof, to the persons entitled thereto, to be ascertained as hereinafter prescribed. Deeds of conveyance for the same shall be executed by the mayor of the city or town under the seal of the corporation; when the entries shall be made by the corporate authorities of such city or town, and by the judge of probate when the entry shall be made by such judge, and in all cases said deeds shall be acknowledged before and certified by an officer competent under the laws of this Territory to take acknowledgments of deeds of conveyance of real estate.

Public notice to be given after entry.

(1167.) Sec. 2. That within thirty days after the entry of any such lands, the corporate authorities, or judge entering the same, shall give public notice of such entry in at least five public places within such town or city, and by publishing such notice in some newspaper printed and published in this Territory, having a general circulation in such town or city. Said notice shall be published once in each week for at least three successive months, and shall contain an accurate description of the lands so entered as stated in the certificate of entry or duplicate receipt received from the officer of the land office.

Within what time and where persons claiming land to file their claim.

(1168.) Sec. 3. That each and every person, or association, or company of persons, or corporation claiming to be the rightful owner of possession, occupant or occupants, or to be entitled to the occupancy or possession of such lands, or to any lot, block, share or parcel thereof, shall, within six months after the first publication of such notice, in person, or by his, her or their agent or attorney, sign a statement in writing, containing an accurate description of the particular parcel or parts of land in which he, she, or they claim to have an interest, and the specific right, interest, or estate therein, which he, she, or they claim to be entitled to receive, and deliver the same to the clerk of the probate court of the county in which such town or city is situated, and the clerk of said court shall enter such statement in a book to be kept for that purpose, and file and preserve the same in his office, noting the day of filing. The filing of which statement shall be considered notice to all persons claiming any interest in the lands described therein, of the claim of the party filing the same; and all persons failing to make and deliver such statement within the time limited in this section shall be forever barred the right of claiming or recovering such land, or any interest or estate therein, or in any part, parcel or share thereof, in any court of law or equity: *Provided*, that when good cause is shown why such statement could not be filed within the time herein specified, the judge may extend the time not exceeding one year from the first publication of said notice.

Proceedings in case of adverse claimants.

(1169.) SEC. 4. That if at the expiration of six months after the first publication of the notice as aforesaid, it shall be found by the statement filed that there are adverse claimants to any tract or parcel of land, it shall be the duty of the judge of probate to cause notice to be served upon said claimants, or their agents or attorneys (taking up each case in the order of filing), to appear before the probate court of the county in which such tract or parcel of land may be situated, and prosecute their claim upon a day to be appointed by said court, not less then five nor more than thirty days from the service of such notice; the statement filed as aforesaid shall stand in said court in the place of pleadings, and an issue be made thereon; and on the day set for the hearing the judge shall proceed to hear the proof adduced and allegations of the parties, and decide according to the justice of the case. The court shall cause full minutes of the testimony to be kept, which shall be preserved with the papers in the case and be entered upon the records of said court, with the decision at length. If either party shall feel aggrieved at the decision of said court, he, she or they shall have the right of appeal to the district court, as in other cases, and upon the perfection of such appeal, the court shall cause the testimony and written proofs adduced, together with the statements of the parties and the judgment of the court, to be certified to the district court, to be there tried anew without pleadings, except as above provided.

Duty of the court.

(1170.) SEC. 5. That after the expiration of the six months provided in section three of this act, for filing statements in cases where there are no adverse claimants, the court shall cause a summons to be issued and served upon the party filing such statement or his, her or their agent, requiring him, her or them, or their agent or attorney, to appear before said court upon a day designated, not less than three nor more than ten days from service of such summons, and to make proofs in support of such statement, full minutes of which shall be kept; and the court, if satisfied from the proofs of the validity of such claim, shall cause judgment to be entered of record, and the minutes of the proof to be preserved as required in section four of this act; and thereupon shall certify the fact to the mayor of the city or town in cases where the corporate authorities shall have made the entry, who shall make to the party claimant a deed of conveyance for the tract or parcel of land so adjudged him, her or them. If the court shall decide against the validity of such claim, the decision shall in like manner be entered of record and the minutes of testimony preserved; and in all cases appeals and writs of error shall be allowed from the decision of such court, to any party in interest as in other cases. In cases where the entry shall have been made by the probate judge, the conveyance shall be made by him in accordance with the judgment entered as aforesaid; each case shall be taken up by the court in the order in which the statements have been filed. If the judge of probate shall be a claimant of lands in any city or town in his county, he may file the statement required in section three of this act, in the probate court of an adjoining county, who shall cause notices thereof to be given to all adverse claimants, if any, and to the mayor of such city or town, and in cases of unincorporated towns, to the justice of the peace of the precinct in which such town may be situated; and the probate court of such adjoining county, shall proceed in the examination and decision of the case as provided in this act as in other cases, and upon the certificate of said court, a deed to the lands shall be made to the party or parties entitled thereto, as provided in this section: *Provided*, that if there shall be an adverse claimant or claimants to any tract so claimed by any judge of probate, and a statement shall have been filed as required in section three of this act, the probate court shall cause the same to be certified to the probate court of the county selected to hear and determine such case. A copy of the final judgment appealed under this act shall authorize the mayor or judge to make conveyance as hereinbefore provided as in other cases, or withhold it according to such judgment. In cases where the judge of probate, who shall hold the lands in trust, is a party claimant to any portion thereof, and the final judgment of the proper tribunal shall be in his favor, such decision shall operate to discharge the trust in the portion of land so assigned to him. If the mayor of any city or town shall be a claimant of any lands in such city or town, the recorder of such city shall, upon the certificate of the probate court, made as in case of other claimants, execute a deed of conveyance to such mayor for the lands finally adjudged to him by the court, under the same rules and regulations as prescribed in other cases.

Appeal given in case of adverse claimants.

(1171.) SEC. 6. That a change of venue as in suits at law shall be allowed in all cases arising under this act. Change of venue.

(1172.) SEC. 7. That within thirty days after the expiration of the six months prescribed in section three, for filing statements, the corporate authorities or judge holding the title to the lands described in the notice published, as required in section two, shall make a statement in writing containing a true account of all moneys by them or him expended in the acquisition of the title and the administration or execution of the trust to that time, including the money paid by them or him for the purchase of said lands, all necessary traveling expenses, all moneys paid for publishing or posting notices, and for all other necessary and proper expenses incident to such trust to that time, which statement shall be filed in the office of the clerk of the probate court of the county in which such town or city may be situated, and shall be open for inspection by all persons interested, during ordinary business hours. Authorities to make statement.

(1173.) SEC. 8. That before the corporate authorities or judge holding any such lands in trust as aforesaid, shall be required to execute, acknowledge or deliver any deed of conveyance thereof, as hereinbefore provided, to any person or persons claiming and adjudged to be entitled to such deed, such person or persons shall pay or tender to the mayor or judge, as the case may be, the sum of money chargeable on the part thereof to be conveyed by such deed to be ascertained by taking the whole amount of the cost of the land of which it is a part, and expenses stated in the account as prescribed in section seven in the proportion which the area of such lot shall bear to the whole amount of land entered after deducting the area of all streets, alleys and public grounds in such city or town and the reasonable charges for preparing, executing and acknowledging such deed, including the interest on the money expended: *Provided*, errors in measurement or computation shall not invalidate any proceedings under this act. Proportionate pay or tender must be made before deed can be demanded.

(1174.) SEC. 9. That whenever the title to such lands shall be held by the corporate authorities of any town or city, all lands designated for public use by such corporate authorities as streets, lanes, avenues, alleys, parks, commons and public grounds, shall vest in and be held by the corporation absolutely, and shall not be claimed adversely by any person or persons whatsoever; and the judge of probate who shall have entered any lands in trust for any When lands are taken for public use.

town or city which may afterwards become incorporated, shall, under the same conditions, convey by deed to the corporation thereof the lands designated for the use of the public as aforesaid; that in the case of death or disability of the judge of probate or mayor who may have entered the lands in trust for any town or city under the law of Congress, as aforesaid, before the complete execution of such trust, the same shall vest in his successor in office, who shall proceed with the execution of the same in the same manner, and under the same conditions imposed by this act upon the judge or mayor receiving the trust in the first instance.

Disposition of unclaimed land.

(1175.) SEC. 10. If there shall remain any unclaimed lands within the limits of such city or town, after the expiration of six months from the publication of the notice provided in section three, the corporate authorities in cases where the lands shall have been entered by them, and the judge of probate, in cases where the lands shall have been entered by him, shall cause the same to be surveyed and laid out into suitable blocks and lots, and shall reserve such portions as may be deemed necessary for public squares, school houses or hospital lots, and shall cause all necessary streets, roads, lanes and alleys to be laid out through the same, a plot of which, properly certified, shall be recorded in the recorder's office of the county in which the same may be situated; and the mayor of such city or town, or judge as aforesaid, may sell the lots or blocks so laid out, and not reserved for public use in suitable parcels, to possessor of adjoining lands or to other citizens of such city or town, at a price not less than five dollars per acre, or fraction of an acre, and in case two or more persons apply for the same tract, they shall sell the same by auction to the highest bidder, and if any such lands remain unsold at the end of three months from the date of filing the plat thereof for record, as required herein, the corporate authorities or judge as aforesaid, shall have power and authority to sell such vacant lands at public or private sale, in such manner and on such terms as they may deem advisable for the best interests of the city or town, and shall give deeds therefor to the several purchasers.

Application of fund arising from sale of land.

(1176.) SEC. 11. That all moneys arising from the sale of lands entered in trust by the corporate authorities of any city or town, or by the judge of probate under the said act of Congress, after deducting all moneys paid for said lands, and the expenses incurred in the management and execution of the trust shall be paid into the county treasury for the support and maintenance of common schools in said city or town, to be applied and expended in such manner as shall be provided by law.

(1177.) SEC. 12. That the several officers hereinafter mentioned, may charge and collect the following fees for their services under this act, viz.: The judge of probate for hearing proofs and giving judgment in each contested case, one dollar and fifty cents; in each case where there is no contest, one dollar; for preparing and executing each deed, fifty cents, exclusive of revenue stamps; for each certificate embodying a copy of the record of the decision of the court, twenty-five cents. The clerk of the probate court for each summons or *subpœna*, twenty-five cents; for filing each statement and entering the same, ten cents; swearing each witness, five cents; for certificate and seal to each certificate of title, twenty-five cents; for each certificate of acknowledgement of deed, with seal, twenty-five cents. The mayor of the city for preparing and executing each deed of conveyance, fifty cents, exclusive of revenue stamps; the sheriff or constable for serving process of summons or *subpœna*, twenty-five cents; for each mile actually traveled in serving process, ten cents. Fees.

An Act to amend "An act prescribing rules and regulations for the execution of the trust arising under an act of Congress entitled 'An act for the relief of the inhabitants of cities and towns upon the public lands, approved March 2, 1867,' approved February 17, 1869."

[*Approved February* 18, 1876.]

(1178.) *Whereas*, It is made to appear that many persons and rightful claimants as enumerated in the aforesaid act of the seventeenth of February, 1869, have failed to present their application for lots or parcels of land within the time limited in said act; and

Whereas, Great injustice may result to claimants unless a remedy be provided for such cases; therefore

Be it enacted by the Governor and Legislative Assembly of the Territory of Utah: That any claimant of any lot, block or parcel of land in any town or city, as defined in said act of the Territory of Utah, to which this is amendatory, to wit, the act referred to in the title hereof, and the act of Congress approved March 2d, 1867, who shall have failed or neglected to make application for said lot, block or Extending time for filing.

parcel within the time therein provided, may at any time within six months after the approval of this act, make and file the application provided for in said act, and the same shall be heard and determined in the same manner, and with like effect as if made within the time prescribed in said original act.

Provided, that in no case shall such application be received or entertained by the probate court, if it appear that the title to the lot, block or parcel shall have been theretofore adjudged or decreed to any prior claimant by said court; and

Provided, further, that nothing in this act shall be so construed as to enlarge or extend the rights of parties in contested cases now in process of adjudication.

CHAPTER V.

MECHANICS' AND LABORERS' LIEN.

SECTION.
1179. Lien on property in certain cases.
1180. How lien perfected.
1181. When lien shall cease to exist.
1182. Contents of complaint.
1183. Summons how served.
1184. Proceedings to enforce lien.
1185. Precedence of liens under this act.

SECTION.
1186. Liens may be joined.
1187. When claim satisfied, lien shall be discharged of record.
1188. Liens of sub-contractors and employes.
1189. Claims may be set-off.

An Act to provide for a mechanics' and laborers' lien.

[*Approved February* 18, 1869.]

Lien on property for labor and material in certain cases.

(1179.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That any person who shall hereafter, by virtue of any contract with the owner (or his agent), of any building, or other improvement, perform any labor upon, or furnish any materials for the construction or repairing of such building, or other improvement, shall, upon filing the notice prescribed in the next section; have a lien upon such building or other improvement, and the right of possession of the ground upon which the same is situated, with the right of way to and from the same, for such labor done or material furnished.

How lien perfected.

(1180.) SEC. 2. Any person may avail himself of the provisions of this act, whether his claims be due or not; by filing in the recorder's office of the county in which such building or other improvement is situated, at any time within three months after the labor performed or the material furnished, or after the completion of such building, or other improvement, a notice of his intention to hold a lien upon such building for the amount due or to become due, specifically setting forth such amount, and containing a description of the building or other improvement, and where located, upon which the labor was performed, or for which the materials were furnished; which notice shall be recorded by the recorder in a book to be kept for that purpose.

When lien shall cease to exist.

(1181.) SEC. 3. Such lien shall cease to exist at the expiration of one year after the completion of the building or other improvement, unless before that time an action to enforce the same shall have been commenced by the person having such lien against the owner with whom, or with whose agent the contract was made; unless such claim be not due at the expiration of one year after such completion, in which case the action shall be commenced within three months after the same shall have become due.

Contents of complaint.

(1182.) SEC. 4. The complaint of the plaintiff shall contain a brief statement of the contract on which the claim is founded, the amount due thereon, the time when the notice was filed with the recorder, the time when the building or other improvement was completed, if it be completed, with a description of the premises, and any other material facts, and shall pray that the premises be sold, and the proceeds of the sale be applied to the discharge of the lien.

Summons how served.

(1183.) SEC. 5. The summons shall be served as in other cases, or, may be made by delivering a copy thereof to the person in possession of the premises. If the defendant shall have sold or disposed of the premises before the service of summons, the court shall direct notice of the proceedings to be served on the purchaser, or his agent for the premises, who may thereupon, if he desire it, be made a party defendant to the action.

Proceedings to enforce lien.

(1184.) SEC. 6. The proceedings in an action to enforce such lien, shall be the same as in other actions, except as otherwise provided in this act; and if judgment be rendered for the plaintiff, he may have an execution issued thereon to sell the premises, and thereupon the proper officer shall proceed as upon other executions for the sale of real property; and the owner or any lien creditor shall have the same rights of redemption after sale.

Precedence of liens under this act.

(1185.) SEC. 7. The liens created in pursuance of the provisions of this act shall have precedence over all other liens except taxes, after the commencement of the building or other improvement, and if upon a sale of the premises by execution, the proceeds be insufficient to pay all such liens, the court shall order them to be paid in proportion to the amounts respectively due to each, and any other property of the defendant, not exempt from execution, may be sold to satisfy such execution.

Liens may be joined.

(1186.) SEC. 8. All, or any number of persons having liens on the same building or other improvement pursuant to the provisions of this act, may join in one action, but their claims shall be stated distinctly, as in a separate action, and the judgment shall show the amount to which they are respectively entitled.

When claim satisfied lien shall be discharged.

(1187.) SEC. 9. Whenever any person having a lien by virtue of the provisions of this act, shall have received satisfaction for his claim and the cost of his proceedings thereon, he shall, within six days after the tender or payment, enter satisfaction of his demand in the office where the same is recorded; and upon failure to do so, he shall pay to the party aggrieved, all damages which he may have sustained in consequence of such failure or neglect.

Lien of sub-contractor and employes.

(1188.) SEC. 10. Any sub-contractor, journeyman or laborer, employed in the construction or repairing of any building or other improvement, or in furnishing any materials for the same; may give the owner thereof notice in writing, particularly setting forth the amount of his claim and the service rendered, for which his employer is indebted to him, and that he holds the owner responsible for the same, and the owner of the building or other improvement shall be liable for such claim, if indebted to the employer to the amount; if not, then for the amount due from him to the said employer at the time such notice was served, which claim or amount may be recovered by an action against the owner, if brought within one year after the completion of the building or other improvement, or the repairs thereon.

Claim may be set off.

(1189.) SEC. 11. Whenever any sub-contractor, journeyman or laborer, shall receive any such claim from the owner of the building or other improvement, the same may be set off by such owner, in any action brought against him by the person who otherwise would be entitled to recover the same under the contract.

CHAPTER VI.

GENERAL LIEN FOR COMMON CARRIERS.

SECTION.
1190. Lien of carriers for freight and back charges.
1191. When property may be sold to pay charges; surplus to be paid to owners of goods.
SECTION.
1192. Notice of sale to be advertised thirty days.

General lien for common carriers.

[*Approved February* 20, 1874.]

(1190.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That all common carriers in this Territory shall have a lien upon any goods, wares, merchandise or other property in their possession, as such carrier, for freight, or transportation thereof, including back charges paid by such carriers to connecting lines. Lien of carrier for freight and back charges.

(1191.) SEC. 2. That any railroad company or common carrier transporting freight, may, if any property transported by such carrier be not accepted, and taken away by the consignee thereof, within six months from the time it shall have been received at the point on such carrier's line or route, where the same is to be delivered, sell the same in the manner hereinafter prescribed, and out of the proceeds of such sale retain the amount due such carrier from the consignee for freight or carriage, and a reasonable compensation for the storage and care of such property during said time, together with reasonable and necessary costs of such sale; and the surplus if any, shall be paid to the owner, consignee or agent. When property may be sold to pay charges. Surplus to be paid to owners of goods.

Notice of sale to be advertised 30 days.

(1192.) SEC. 3. Whenever any goods, wares, merchandise or other property shall remain in the possession of any carrier, at the end of six months from the time of its arrival at the place of delivery, it shall be lawful for such carrier to sell such property at public action, by first publishing a notice thereof, in some newspaper published and having a general circulation in the county where such property is to be exposed for sale, for a period of thirty days prior to such sale; or if there is no paper published in such county, then in some newspaper published in this Territory, and having a general circulation in such county. Said notice shall contain the name and address, if known, of the consignee, the name of the consignor, from what place shipped, with a general description of the property to be sold, if the nature thereof be known; if not, then of the box, cask or other covering of the same.

CHAPTER VII.

LIEN OF HOTEL KEEPERS, ETC.

SECTION.
1193. Penalty for false representations to hotel keepers, etc.
1194. Giving lien to hotel keepers, etc.
1195. How sales made and notice thereof.

An Act for the protection of the keepers of inns, hotels, and boarding houses.

[*Approved February* 15, 1876.]

Penalty for false representations to hotel keepers etc.

(1193.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That any person who shall put up at any hotel, inn, or boarding house, and shall procure any food, entertainment or accommodation, without paying therefor except where credit is given by express agreement, with intent to cheat or defraud such owner, or keeper thereof, out of the pay for the same; or who with intent to cheat or defraud such owner or keeper, out of the pay therefor, shall obtain credit at any hotel, inn or boarding house for such food, entertainment, or accommodation by means of any false show of baggage or effects brought thereto; or who shall with such intent remove or cause to be removed, any baggage, or effects from any hotel, inn or boarding house, while there is a lien existing thereon for the proper charges due from him for fare and board furnished therein, shall be punished by a fine not exceeding one hundred dollars, or by imprisonment not exceeding three months.

Giving lien to hotel keepers, etc.

(1194.) SEC. 2. Whenever a special agreement shall have been made between the keeper of any hotel, inn, or boarding house, and any person boarding at such hotel, inn or boarding house, regarding the price of such person's board thereat, all the baggage, goods, and effects of every kind of such person kept at such hotel, inn or boarding house, shall be subject to the lien of such hotel keeper, inn keeper, or boarding house keeper, for all such sums as shall be at any time due to such keeper from such person for board or lodging, and such hotel keeper shall have the right to detain such baggage, goods and effects, until such debt so contracted shall be fully paid, and in case of the non-payment of such debt for the period of sixty days after it is due, such hotel keeper, inn keeper or boarding house keeper shall have the right to sell said baggage, goods and effects or such part thereof as shall be necessary, and apply the proceeds of such sale to the payment of such debt.

How sales made and notice thereof

(1195.) SEC. 3. All sales under this act shall be at public auction for cash. Before any such baggage, goods and effects shall be sold, at least ten days' notice of such sale shall be given, by advertising the same at least five times in some newspaper published and having general circulation in the city, village, or town in which the hotel, inn, or boarding house is situated; or where no such paper is so published or circulated, then by written or printed handbills posted up in at least five public places, one of which shall be in the hotel, inn, or boarding house where the baggage, goods and effects are detained.

CHAPTER VIII.

FORCIBLE ENTRY AND DETAINER.

SECTION.
1196. Who deemed in possession; forcible entry defined; time.
1197. Proceedings; complaint; corporation defendant; summons; when returnable.
1198. Service by whom and how made.
1199. Appearance; demurrer and nonsuit; married women; amendments; continuance.
1200. Jury trial.
1201. Findings; judgment; may be for part.
1202. Appeal; writ of restitution; undertaking when stay is desired; in other cases.
SECTION.
1203. Distraint abolished.
1204. Implied covenants.
1205. Tenancy of city lots; of agricultural lands.
1206. Notice to quit.
1207. Forfeiture for non-payment; tenant holding over.
1208. Remedies applicable to what cases.
1209. Right of entry.
1210. Penalty for holding over.
1211. Bawdy or gaming houses.
1212. Proceedings.
1213. Defense.
1214. Real property defined.
1215. Adopting civil practice act.

An Act prescribing a summary mode of procedure for the recovery of the possession of real property forcibly or unlawfully withheld.

[*Approved February* 16, 1872.]

Who deemed in possession.
Forcible entry defined.
Time.

(1196.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That any person lawfully and peaceably in possession of real property is deemed rightfully possessed thereof, to the bounds of his possession until otherwise determined by due course of law; and it is unlawful for another forcibly and against his will to enter such real property; or having entered peaceably, by force or threats to turn out the person so possessed; or having entered unlawfully, to hold and keep possession thereof by force or threats. Any person who shall have been in open, peaceable and undisturbed possession of real property within thirty days preceding such unlawful entry or detainer, is entitled to the benefit of this act.

Proceedings.
Complaint.

(1197.) SEC. 2. Any person unlawfully deprived of the possession of real property in the manner mentioned in this act may present to any justice of the peace within the county within which such real property is situated a written complaint, verified according to law, setting forth the facts of the case, describing the premises, showing that the defendant is guilty of the unlawful acts charged, stating the damages he shall have sustained, and praying a restoration of the possession of such property and compensatory damages. A corporation may be a defendant when the unlawful acts complained of are done by its agents, at its instance or for its benefit. The justice of the peace shall file said complaint and endorse the date thereon; and shall thereupon issue a summons directed to the defendant, which summons shall contain the names of the parties, the name and residence of the justice, a description of the premises, a general statement of the nature of the unlawful act complained of, the amount of damages claimed and the relief demanded. It shall also state the place, and the day and hour, which shall be not less than two nor more than ten days from the service of the summons, at which said justice will hear in a summary manner the proofs of the parties and notify the defendant to appear and answer before that time or the relief demanded against him will be granted.

Corporation defendant.

Summons.

When returnable.

(1198.) SEC. 3. The summons may be served by the sheriff or any constable of the county, or other person especially authorized in writing by the justice (which authorization shall be endorsed upon or annexed to the summons). The summons shall be served without unnecessary delay and returned as in civil actions. Service shall be made by delivering a copy of the summons to the defendant personally; or, if he cannot be found, by leaving a copy with some person, of suitable age and discretion, at his usual place of business or residence or, if such place of business or residence cannot be found within the county, by affixing a copy in a conspicuous place upon the property and also delivering a copy to some person there residing or remaining if any.

Service by whom.

How made.

(1199.) SEC. 4. At the time and place appointed the defendant, or any person in possession of said real property or any part thereof, may appear and answer or demur to the complaint. But no demurrer shall lie nor shall the plaintiff be non-suited on account of the non-joinder of any person who might have been made a defendant; nor because the defendant is a married woman, when it shall also appear that her husband is not a resident of the county, or, being a resident, conceals himself to avoid service of summons. The answer shall be verified. Amendments must be

Appearance.

Demurrer and non-suit.

Married woman.

Amendments

freely allowed in furtherance of justice, and no continuance must be granted unless it be shown by affidavit to the satisfaction of the justice that good cause exists and that injustice will otherwise be done. In no case shall an adjournment be allowed for more than ten days, except by consent of both parties.

Continuance.

Civil practice act.

(1200.) SEC. 5. Sections five hundred and forty-three to five hundred and forty-six, both inclusive, of "An act to regulate proceedings in civil cases in the courts of justice in this Territory," etc., shall be applicable to proceedings under this act.

Judgment may be for part.

(1201.) SEC. 6. If the finding of the court or the verdict of the jury be for the plaintiff the damages shall also be assessed and judgment shall be thereupon entered for a restitution of the premises and the amount of damages assessed, together with the costs of the proceedings. The finding, or verdict, and judgment may be for the plaintiff as to a part of the premises, and for the defendant, or other person in possession appearing and contesting the plaintiff's right, as to the balance; and in all cases the judgment shall be according to the fact.

Appeal.

Writ of restitution.

Undertaking when stay is desired.

In other cases.

(1202.) SEC. 7. If judgment be given for the defendant the plaintiff may appeal as in other cases of judgment rendered in justice's courts. If judgment be for the plaintiff he shall be entitled to a writ of restitution within two days. If the defendant shall desire a stay of proceedings he shall within that time, give an undertaking, to be approved as in other cases of undertakings required by law, in such sum as the justice shall determine, taking into consideration the nature of the property, and the time that may elapse before the appeal can be heard and determined, to the effect that the appellant will abide by the judgment of the appellate court, and will pay the amount of the judgment appealed from, if affirmed, and any other amount, and all costs that may be recovered against him in the appellate court; and the writ of restitution shall thereupon be stayed. If no stay of proceedings be desired, the defendant may appeal as in other cases of appeal from a justice's court.

Distraint abolished.

(1203.) SEC. 8. It is not lawful within this Territory to distrain for rent.

Implied covenants.

(1204.) SEC. 9. The only covenants implied in the contract of leasing are: First, on the part of the lessor for quiet enjoyment of the demised premises, and that the lessee shall have possession during the continuance of the term demised; and Second, on the part of the leesee, that he will use the demised premises in a reasonable and careful manner for the purposes for which they were demised.

Tenancy of city lots.

(1205.) SEC. 10. In ordinary leases, unless otherwise specially agreed in writing between the parties, the tenancy shall be held to be: First, if of improved town or city lots, a general tenancy at will from month to month, and may be terminated by either party by a written notice to quit, of not less than fifteen days; Second, if of improved town or city lots, agricultural lands or other real property, a general tenancy at will from year to year, and may be terminated by either party by a written notice to quit, of not less than three months.

Of agricultural land.

Notice to quit, how served.

(1206.) SEC. 11. The notices mentioned in the preceding section must be served: First, if on the landlord, by delivering it to him personally, or to his agent, or leaving it at the usual or last place of residence of either; Second, if on the tenant, by delivering it to him personally or to some person of discretion residing on the premises; or, if neither can be found after reasonable search, by affixing it to some conspicuous part of the premises where it may conveniently be read.

Forfeiture for non-payment of rent.

(1207.) SEC. 12. Non-payment of rent upon demand, when due, and for three days thereafter shall, at the option of the landlord, terminate the tenancy without notice to quit, and the landlord shall have the right of re-entry immediately. A tenant under a written lease, holding over after the expiration of his term, is not entitled to a notice to quit but may be ejected by order of any court having jurisdiction.

Tenant holding over.

Remedies, applicable in certain cases.

(1208.) SEC. 13. The remedies provided by this act apply to all cases when a person unlawfully detains possession of real property, whether the relation of landlord and tenant exist by express agreement or by implication of law; and also to all cases of the expiration of a term by forfeiture upon breach of condition: *Provided*, that by the terms of the lease the landlord shall have reserved the right of re-entry upon such breach.

Right of re-entry.

(1209.) SEC. 14. Upon the termination of a tenancy in any of the cases mentioned above, if the tenant shall fail to surrender possession within three days, the right of the landlord to re-enter shall be perfect.

Penalty for holding over.

(1210.) SEC. 15. If any tenant or person collusively with him shall hold over any real property after the right of re-entry by the landlord has become perfect, as above provided, such person is liable to pay, and the landlord may recover, double rent for the time of such unlawful holding, and any special damages sustained by reason thereof.

Bawdy or gambling houses.

(1211.) SEC. 16. When any premises are used or occupied as a bawdy house, or house of assignation, or for gambling purposes, the landlord may at any time, without previous notice, consider the lease or tenancy under which such premises are held as forfeited; and such proceedings may thereupon be had as upon forfeiture for non-payment of rent.

Proceedings.

(1212.) SEC. 17. Summary proceedings to evict persons unlawfully withholding possession of real property, after the determination of a tenancy in any of the modes specified above, may be had as provided in sections two to seven, both inclusive, of this act.

Defense.

(1213.) SEC. 18. Any person contesting the right of the plaintiff in any proceeding commenced under this act, shall not be allowed to deny the title of the landlord, but he may deny and disprove any material fact upon which the summons was issued, and he may show that the landlord's title has been extinguished or terminated by a conveyance or by operation of law.

"Real property" defined.

(1214.) SEC. 19. The term "real property," as used in this act, includes lands, tenements and all corporeal hereditaments, ditches and canals.

Adopting civil practice act.

(1215.) SEC. 20. When not otherwise provided herein, proceedings under this act shall be had in conformity to "An act to regulate civil proceedings in the courts of justice of this Territory," etc., approved February 17th, 1870.

CHAPTER IX.

OF THE ACTION FOR CAUSING DEATH BY WRONGFUL ACT, NEGLECT OR DEFAULT.

SECTION.
1216. Company or persons liable for damages.

SECTION.
1217. Action to be brought by personal representative.

An Act providing damages for death caused by wrongful act, neglect or default.

[*Approved February* 20, 1874.]

Company or person liable for damages.

(1216.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That whenever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect or default is such as would, if the death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then, and in every such case, the person who, or the company or corporation which, would have been liable if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony.

Action to be brought by personal representatives.

(1217.) SEC. 2. That every such action shall be brought by, and in the names of the personal representatives of such deceased person, and the amount received in every such action shall be distributed by direction and decree of the proper probate court, to such persons (other than creditors) as are by law entitled to distributive shares of the estate of such deceased person, and in such proportions as are prescribed by law: *Provided*, that every such action shall be commenced within two years after the death of such deceased person: *And provided further*, that the damages so recovered shall not in any case exceed the sum of ten thousand dollars.

CHAPTER X.

OF MINES AND MINING.

SECTION.
1218. Location of claims.
1219. Defacing notice; unlawful interference; altering records; penalty therefor; justices have jurisdiction.
1220. Unlawfully extracting ores; damages; arrests.
1221. Miners' lien.
1222. Copies, location notices, etc., recorded prima facie evidence; proviso, that recorder certify; seal of office.
1223. County recorders to record mining rules, etc.; certified copy prima facie evidence.
1224. Fees.
1225. Recorder of mining districts and public officers requiredto keep seal.

An Act to provide rules for the working and development of mines.

[*Approved February* 16, 1872.]

Location of claims.

(1218.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That any citizen of the United States, and any person who shall have declared his intention to become such, who shall hereafter discover any mineral deposit, lead or lode bearing gold, silver, tin, platina, copper or cinnabar, shall be entitled to one claim thereon, by right of discovery, and one claim by right of location: *Provided*, that no person shall be entitled to more than one claim by right of location, on any one lead or lode.

Defacing notices, etc.

Unlawful interference.

Altering records.

Penalty therefor.

Justices have jurisdiction.

(1219.) SEC. 2. Any person or persons who shall willfully or maliciously tear down or deface a notice posted on any mining claim, or take up or destroy any stake or monument, marking any such claim, or interfere with any person lawfully in possession of said claim, or who shall alter, erase, deface or destroy any record kept by a mining recorder, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five, nor more than one hundred dollars, or by imprisonment for not less than ten days, nor more than six months, or by both such fine and imprisonment. Justices of the peace in their respective counties shall have jurisdiction of such offenses.

Unlawfully extracting ores.

(1220.) SEC. 3. Any person wrongfully entering upon any mine or mining claim, and carrying away ores therefrom, or extracting and selling ores from any mine, being the property of another shall be liable to the owner or owners of said ore for three times the value thereof, recoverable by an action at law; and should the plaintiff file his affidavit that the defendant did unlawfully take such ores, the defendant may be arrested and held to bail, as in cases for the recovery of the possession of personal property unjustly detained.

Damages.

Arrest.

(1221.) SEC. 4. Any person or persons who shall perform any work or labor upon any mine, or furnish any materials therefor, in pursuance of any contract made with the owner or owners of such mine, or of any interest therein, shall be entitled to a miner's lien for the payment thereof upon all the interest, right and property in such mine by the person or persons contracting for such labor or materials at the time of making such contract; said lien may be enforced in the same manner and with the same effect as a mechanic's lien, as provided by the laws of Utah.

Miners' lien.

An Act in relation to proving the records and mining rules and regulations of the mining districts of this Territory, and for other purposes.

[*Approved February* 18, 1876.]

(1222.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That copies of notices of location of the mines, lodes and veins, and of tunnel sites recorded in the several mining districts, and of the mining rules and regulations in force in the several mining districts, in like manner recorded shall be receivable in all the courts of this Territory, as *prima facie* evidence of such notices, rules and regulations: *Provided,* the recorder of the district shall certify under his hand and seal that such copies are full, true and perfect copies from the records in his custody. The seal of office of the mining recorder so certifying, affixed to such certificate shall be *prima facie* evidence of the fact of the election and qualification and official character of such mining recorder.

Copies of location of mines, etc., recorded, prima facie evidence.

Proviso: that recorders certify.

Seal of office.

(1223.) SEC. 2. It shall be the duty of the county recorder, of the several counties of this Territory to record the mining rules and regulations of the several mining districts in their respective counties; and when so recorded, certified copies thereof shall be received in all the courts of this Territory, as *prima facie* evidence of such rules and regulations.

County recorder to record mining rules, etc.

Certified copy prima facie evidence.

Fees.

(1224.) SEC. 3. The mining recorders of the several mining districts shall be allowed the same fees for recording and making copies of any records in their custody as are now allowed by law for like services to county recorders. And it shall be the duty of each mining recorder upon request and payment or tender of the fees therefor, to make and deliver to any person requesting the same, duly certified copies of any records in his custody; and for a failure so to do, or for receiving larger fees for any such service than those herein provided, such mining recorder shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subjected to the same penalties, provided against public officers in section twenty of the act entitled "An act to regulate fees and compensation for official and other services in the Territory of Utah," passed February 20, 1874.

Recorders of mining districts public officers, and required to keep seal.

(1225.) SEC. 4. Recorders of mining districts shall for the purposes of this act be deemed public officers, and the records in their custody shall be deemed public records, and they are hereby required to keep an official seal.

TITLE XX.

CIVIL PRACTICE ACT.

TITLE I.

OF THE FORM OF CIVIL ACTIONS AND THE PARTIES THERETO.

SECTION.
1226. Only one form of action.
1227. Parties designated.
1228. Question of fact.
1229. Action in whose name prosecuted.
1230. Set-off when not prejudiced.
1231. Action by executors.
1232. When married woman is party; exceptions.
1233. Defense by married woman.
1234. Minor, how to appear.

SECTION.
1235. Guardian, how appointed.
1236. Injury to child, etc.
1237. Plaintiff, who may be joined as.
1338. Defendant, who may be made.
1239. Parties, who to be joined.
1240. Separately liable may be joined.
1241. Death of party or transfer of interest.
1242. Controversy, when court to determine.

An Act to regulate proceedings in civil cases in the courts of justice of this Territory, and to repeal certain acts and parts of acts.

[*Approved February* 17, 1870.]

Only one form of action.

(1226.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That there shall be in this Territory but one form of civil action for the enforcement or protection of private rights, and the redress or prevention of private wrongs.

Parties designated.

(1227.) SEC. 2. In such action the party complaining shall be known as the plaintiff, and the adverse party as the defendant.

Question of fact.

(1228.) SEC. 3. When a question of fact, not put in issue by the pleadings, is to be tried by jury, an order for the trial may be made, stating distinctly and plainly the question of fact to be tried; and such order shall be the only authority necessary for a trial.

Action in whose name prosecuted.

(1229.) SEC. 4. Every action shall be prosecuted in the name of the real party in interest, except as otherwise provided in this act.

Set-off when notprejudiced

(1230.) SEC. 5. In the case of an assignment of a thing in action, the action by the assignee shall be without prejudice to any set-off or other defense, existing at the time of, or before notice of the assignment; but this section shall not apply to a negotiable promissory note or bill of exchange, transferred in good faith, and upon good consideration, before due.

Action by executor.

(1231.) SEC. 6. An executor, or administrator, or trustee of an express trust, or a person expressly authorized by statute, may sue without joining with him the person or persons for whose benefit the action is prosecuted. A trustee of an express trust, within the meaning of this section, shall be construed to include a person with whom, or in whose name, a contract is made for the benefit of another.

When married woman is party, exceptions.

(1232.) SEC. 7. When a married woman is a party, her husband shall be joined with her; except that: First—When the action concerns her separate property, she may sue alone. Second—When the action is between herself and her husband, she may sue or be sued alone.

Defense by married woman.

(1233.) SEC. 8. If a husband and wife be sued together, the wife may defend for her own right.

Minor, how to appear.

(1234.) SEC. 9. When a minor is a party, he shall appear by guardian, who may be appointed by the court in which the action is prosecuted, or by a judge thereof.

Guardian, how appointed.

(1235.) SEC. 10. The guardian shall be appointed as follows: First—When the minor is plaintiff, upon the application of the minor, if he be of the age of fourteen years; or, if under that age, upon the application of a relative or friend of the minor. Second—When the minor is defendant, upon the application of the minor, if he be of the age of fourteen years, and apply within ten days after the service of the summons; if he be under the age of fourteen, or neglect so to apply, then upon the application of any other party to the action, or of a relative or friend of the minor.

Injury to child, etc.

(1236.) SEC. 11. A father, or in case of his death or desertion of his family, the mother, may maintain an action for the injury or death of a child; and a guardian for the injury or death of his ward.

(1237.) SEC. 12. All persons having an interest in the subject of the action, and in obtaining the relief demanded, may be joined as plaintiffs, except when otherwise provided in this act.

Plaintiff who may be joined as.

(1238.) SEC. 13. Any person may be a defendant, who has, or claims, an interest in the controversy, adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of the question involved therein.

Defendant, who may be made.

(1239.) SEC. 14. Of the parties to the action, those who are united in interest shall be joined as plaintiffs, or defendants; but if the consent of any one, who should have been joined as plaintiff, cannot be obtained, he may be made a defendant, the reason thereof being stated in the complaint; and when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all. Tenants in common, joint tenants, or co-partners, or any number less than all may jointly or severally bring or defend, or continue the prosecution or defense, or any action for the enforcement of the rights of such person or persons.

Parties, who to be joined.

(1240.) SEC. 15. Persons severally liable upon the same obligation or instrument, including the parties to bills of exchange and promissory notes, and sureties on the same or separate instruments, may all, or any of them, be included in the same action, at the option of the plaintiff.

Separately liable may be joined.

(1241.) SEC. 16. An action shall not abate by the death, or other disability of a party, or by the transfer of any interest therein, if the cause of action survive or continue. In case of the death, or disability, of a party, the court, on motion, may allow the action to be continued by or against his representative or successor in interest. In the case of any other transfer of interest, the action may be continued in the name of the original party, or the court may allow the person to whom the transfer is made to be substituted in the action. After verdict shall have been rendered in any action for a wrong, such action shall not abate by the death of any party, but the case shall proceed thereafter in the same manner as in cases where the cause of action now survives by law.

Death of party or transfer of interest.

(1242.) SEC. 17. The court may determine any controversy between parties before it, when it can be done without prejudice to the rights of others, or by saving their rights; but when a complete determination of the controversy can not be had without the presence of other parties, the court

Controversy, when court to determine.

shall order them to be brought in, and thereupon the party directed by the court shall serve a copy of the summons in the action, and the order aforesaid in like manner of service of the original summons, upon each of the parties ordered to be brought in, who shall have ten days, or such time as the court may order, after service in which to appear and plead; and in case such party fail to appear and plead within the time aforesaid, the court may cause his default to be entered, and proceed as in other cases of default, or may make such other order as the condition of the action and justice shall require.

TITLE II.

OF THE PLACE OF TRIAL OF CIVIL ACTIONS.

SECTION.
1243. Trial where subject matter is situated; proviso.
1244. Where cause of action arose.
SECTION.
1245. Where parties reside.
1246. Changing place of trial.

Trial where subject matter is situated.

(1243.) SEC. 18. Actions for the following causes shall be tried in the county in which the subject of the action, or some part thereof, is situated, subject to the power of the court to change the place of trial, as provided in this act: First—For the recovery of real property, or of an estate, or interest therein, or for the determination in any form of such right or interest, or for injuries to real property. Second—For the partition of real property. Third—For the foreclosure of a mortgage of real property: *Provided*, that where such real property is situate partly in one county and partly in another, the plaintiff may select either of said counties, and the county so selected shall be the proper county for the trial of any or all of such actions as are men-

Proviso.

tioned in the first, second and third subdivisions of this section.

Where cause of action arose.

(1244.) SEC. 19. Actions for the following causes shall be tried in the county where the cause, or some part thereof, arose, subject to the like power of the court to change the place of trial: First—For the recovery of a penalty or forfeiture imposed by statute; except, that when it is imposed for an offense committed on a lake, river or other stream of water, situated in two or more counties, the action may be brought in any county bordering on such lake, river or stream, and opposite to the place where the offense was committed. Second—Against a public officer, or person especially appointed to execute his duties, for an act done by him in virtue of his office, or against a person who, by his command or in his aid, does anything touching the duties of such officer.

Where parties reside.

(1245.) SEC. 20. In all other cases, the action shall be tried in the county where the cause of action originated, or in which the defendants, or any one of them, may reside at the commencement of the action; or, if none of the defendants reside in the Territory, or if residing in the Territory, the county in which they so reside be unknown to the plaintiff, the same may be tried in any county which the plaintiff may designate in his complaint; and if any defendant, or defendants, may be about to depart from the Territory, such action may be tried in any county where either of the parties may reside, or service be had, subject, however, to the power of the court to change the place of trial, as provided in this act.

Changing place of trial.

(1246.) SEC. 21. If the county designated for that purpose in the complaint be not the proper county, the action may, notwithstanding, be tried therein, unless the defendant, before the time for answering expire, demand in writing that the trial be had in the proper county, and the place of trial be thereupon changed by consent of parties, or by order of the court, as is provided in this section. The court may, on motion, change the place of trial in the following cases: First—When the county designated in the complaint is not the proper county. Second—When there is reason to believe that an impartial trial cannot be had therein. Third—When convenience of witnesses and the ends of justice would be promoted by the change. Fourth—When from any cause the judge is disqualified from acting in the case. When the place of trial is changed, all other proceedings shall be had in the county to which the place of trial is changed; unless otherwise provided by consent of the parties in writing duly filed, or by order of the court; and the papers shall be filed, or transferred accordingly.

TITLE III.

OF THE MANNER OF COMMENCING CIVIL ACTIONS.

SECTION.
1247. Civil actions, how commenced.
1248. Complaint, how endorsed.
1249. Form of summons.
1250. Answer, when to be made.
1251. Notice to be inserted in summons.
1252. Notice in action affecting real property.
1253. Summons, by whom served.
1254. How served.
SECTION.
1255. Service by publication.
1256. Same.
1257. Proceedings when service is only on one or more of several defendants.
1258. Proof of service.
1259. Same.
1560. Jurisdiction.

Civil actions, how commenced.

(1247.) SEC. 22. Civil action in the courts shall be commenced by the filing of a complaint with the clerk of the court, and the issuance of a summons thereon: *Provided*, that after the filing of the complaint a defendant in the action may appear, answer or demur, whether the summons has been issued or not, and such appearance, answer or demurrer, shall be deemed a waiver of the summons.

Complaint, how endorsed

(1248.) SEC. 23. The clerk shall endorse on the complaint the day, month and year the same is filed, and at any time within one year after the filing of the same, the plaintiff may cause to be issued a summons thereon. The summons shall be issued by the clerk under the seal of the court.

Form of summons.

(1249.) SEC. 24. The summons shall state the parties to the action, the court in which it is brought, the county in which the complaint is filed, the cause and general nature of the action, and require the defendant to appear and answer the complaint, within the time mentioned in the next section, after the service of summons, exclusive of the day of service; or that judgment by default will be taken against him, according to the prayer of the complaint, briefly stating the sum of money or other relief demanded in the complaint.

Answer, when to be made.

(1250.) SEC. 25. The time in which the summons shall require the defendant to answer the complaint shall be as follows: First—If the defendant is served within the county in which the action is brought, ten days. Second—If the defendant is served out of the county, but in the district in which the action is brought, twenty days. Third—In all other cases, forty days.

Notice to be inserted in summons.

(1251.) SEC. 26. There shall also be inserted in the summons a notice in substance as follows: First—In an action arising on contract for the recovery only of money or damages, that the plaintiff will take judgment for a sum specified therein, if the defendant fail to answer the complaint. Second—In other actions, that if the defendant fail to answer the complaint, the plaintiff will apply to the court for the relief demanded therein.

Notice in action affecting real property.

(1252.) SEC. 27. In an action for the foreclosure of a mortgage upon real property, or affecting the title or possession of real property, the plaintiff, at the time of filing the complaint, and the defendant, at the time of filing his answer, when affirmative relief is claimed in such answer, or at any time afterwards, may file with the recorder of the county in which the property, or some part thereof is situated, a notice of the pendency of the action, containing the names of the parties, the object of the action, and a description of the property in that county affected thereby, and the defendant may also, in such notice, state the nature and extent of the relief claimed in the answer. From the time of filing, only, shall the pendency of the action be constructive notice to a purchaser, or incumbrancer of the property affected thereby; and in case of the foreclosure of such mortgage all purchasers or incumbrancers, by unrecorded deed or other instrument in writing made prior to the filing of such notice, and subsequent to the date of such mortgage, shall be deemed and held purchasers or incumbrancers subsequent to the filing of such notice, and subject thereto, unless they can show that at the time of filing the notice the plaintiff had actual notice of such purchase or incumbrance.

Summons, by whom served.

(1253.) SEC. 28. The summons shall be served by the Territorial marshal, or the sheriff of the county where the defendant is found, and, except as hereinafter provided, a copy of the complaint, certified by the clerk of the court in which the action is commenced, shall be served with the summons. When the summons shall be served by the Territorial marshal, or the sheriff of the county, it shall be returned with the certificate or affidavit of the officer, of its service, and of the service of the copy of the complaint, to the office of the clerk of the court in which the action is commenced. When the summons is served by any other person, as before provided, it shall be returned to the office of the clerk of the court in which the action is commenced with the affidavit of such person of its service, and of the service of a copy of the complaint. If there be more than one defendant to the action residing within the county in which the action is brought, a copy of the complaint need be served only on one of such defendants.

How served.

(1254.) SEC. 29.(1) The summons shall be served by delivering a copy thereof attached to a certified copy of the complaint as follows:

First—If the suit be against any incorporated city, service shall be made on the mayor or recorder.

Second—If the suit be against any county, service shall be made on the probate judge or clerk of the county court.

Third—If the suit be against a school district, service shall be made on the trustees or any two of them.

Fourth—If the suit be against any irrigating company, service shall be made on the superintendent or water master.

Fifth—If the suit be against any other corporate body, incorporated under the laws of the Territory, service shall be made on the president, or chief officer, or its secretary, or clerk, if such officer, secretary or clerk can be found within the district, and if not so found, then on any agent of said company or person having in his charge or custody any property of such company. When the defendant is a foreign corporation and has an acknowledged agent, in this Territory, service may be made on such agent, or if no such agent is found, on any person in its employ, or who has any of its property in charge.

Sixth—If against a minor under the age of fourteen years, on such minor personally, and also on his father, mother or guardian, or if such minor has no such father, mother or guardian in the Territory, then on any person having the care and control of such minor, or with whom he resides, or in whose service he is employed.

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(1) As amended Feb. 18, 1876.

Seventh—If against a person judicially declared to be of unsound mind, or incapable of conducting his own affairs, and for whom a guardian has been appointed, on such guardian.

Eighth—In all other cases on the defendant personally, or by leaving a certified copy thereof at his usual place of abode, with some suitable person of, at least, the age of fourteen years.

Objections to the summons, or the service thereof, or proof of service thereof, in the particulars named in this section, may be taken by motion on behalf of defendant, particularly specifying the objections, accompanied by the certificate of counsel that in his opinion the objection is well taken; after the filing and serving of such motion and certificate, the time for pleading shall be suspended until such objection is passed upon by the court.

Service by publication.

(1255.) SEC. 30. When the person on whom the service is to be made resides out of the Territory, or has departed from the Territory, or cannot after due diligence be found within the Territory, or conceals himself to avoid the service of summons, or being a corporation, or joint stock association, cannot be served as provided in section twenty-nine, and the fact shall appear by affidavit to the satisfaction of the court or a judge thereof, and it shall in like manner appear that a cause of action exists against the defendant in respect to whom the service is to be made, or that he is a necessary or proper party to the action, such court or judge may grant an order that the service be made by the publication of the summons.

Same.

(1256.) SEC. 31. (1) The order shall direct the publication to be made in a newspaper to be designated as most likely to give notice to the persons to be served. If any defendant is a non-resident of the Territory, but has an agent therein, service may be made on him by serving the same on such agent, or by leaving a copy thereof at his usual place of business with any person in charge thereof. When any defendant is a non-resident, or his residence is unknown, and has no known agent or place of business in this Territory, service may be made by publication in some newspaper printed in and having a general circulation in the Territory, which publication must contain the names of the parties, plaintiff and defendant, to the complaint, a statement of the object thereof, the name and style of the court in which the same is filed, and also notify the persons thus to be served when they are required to answer; said publication shall be inserted four times consecutively; the first insertion shall be at least forty days before the time of answer, and a copy of which shall be immediately deposited (postpaid) in the post office, directed to the defendant or defendants at their last known place of residence or business. In action upon contracts for the direct payment of money, the court in its discretion may instead of ordering publication, or may after publication, appoint an attorney to appear for the non-resident, absent or concealed defendant, to conduct the proceedings on his part. The return of the officer serving the process as to any fact required by law for him to show on such return, either on *mesne* or final process, shall be *prima facie* evidence of the truth of such facts.

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(1) As amended Feb. 18, 1876.

Proceedings where service is made only on one or more of several defendants.

(1257.) SEC. 32. Where the action is against two or more defendants, and the summons is served on one or more, but not on all of them, the plaintiff may proceed as follows: First—If the action be against the defendants jointly indebted upon a contract, he may proceed against the defendant served, unless the court otherwise direct; and if he recover judgment, it may be entered against all the defendants thus jointly indebted, so far only as that it may be enforced against the joint property of all and the separate property of the defendant served; or, Second—If the action be against defendants severally liable, he may proceed against the defendants served in the same manner as if they were the only defendants.

Proof of service.

(1258.) SEC. 33. Proof of the service of the summons shall be as follows: First—If served by the Territorial marshal, or the sheriff of the county, the affidavit or certificate of such officer; or, Second—In case of publication, the affidavit of the publisher, his foreman or principal clerk, showing the same, and an affidavit of a deposit of a copy of the summons in the post office, if the same shall have been deposited; or, Third—The written admission of the defendant.

Same.

(1259.) SEC. 34. In case of service otherwise than by publication, the certificate or affidavit shall state the time and place of service.

Jurisdiction.

(1260.) SEC. 35. From the time of the service of the summons in a civil action, the court shall be deemed to have acquired jurisdiction, and to have control of all the subsequent proceedings. A voluntary appearance of a defendant shall be equivalent to personal service of the summons upon him.

TITLE IV.

OF THE PLEADINGS IN CIVIL ACTIONS.

SECTION.
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Pleadings

(1261.) SEC. 36. The pleadings are the formal allegations by the parties of their respective claims and defenses, for the judgment of the court.

Forms and rules.

(1262.) SEC. 37. All the forms of pleadings in civil actions, and the rules by which the sufficiency of the pleadings shall be determined, shall be those prescribed in this act.

By plaintiff and defendant.

(1263.) SEC. 38. The only pleadings on the part of the plaintiff shall be the complaint or demurrer to the defendant's answer; and the only pleadings on the part of the defendant shall be the demurrer, or the answer. The demurrer or answer of the defendant, and the demurrer of the plaintiff, shall be filed with the clerk, and a copy served on the adverse party, or his attorney.

Complaint, what to contain.

(1264.) SEC. 39. The complaint shall contain:

First—The title of the action, specifying the name of the court, and the name of the county in which the action is brought, and the names of the parties to the action, plaintiff and defendant.

Second—A statement of the facts constituting the cause of action in ordinary and concise language.

Third—A demand of the relief which the plaintiff claims. If the recovery of money or damages be demanded, the amount thereof shall be stated.

Demurrer.

(1265.) SEC. 40. The defendant may demur to the complaint within the time required in the summons to answer, when it appears upon the face thereof, either:

First—That the court has no jurisdiction of the person of the defendant, or the subject of the action; or,

Second—That the plaintiff has not legal capacity to sue; or,

Third—That there is another action pending between the same parties for the same cause; or,

Fourth—There is a defect or misjoinder of parties, plaintiff or defendant; or,

Fifth—That several causes of action have been improperly united; or,

Sixth—That the complaint does not state facts sufficient to constitute a cause of action.

Seventh—That the complaint is ambiguous, unintelligible or uncertain.

Same.

(1266.) SEC. 41. The demurrer shall distinctly specify the grounds upon which any of the objections to the complaint are taken. Unless it do so it may be disregarded.

Same.

(1267.) SEC. 42. The defendant may demur to the whole complaint, or to one or more of several causes of action stated therein, and answer the residue; or may demur and answer at the same time. (1) The demurrer shall also be accompanied by an affidavit by or on behalf of the defendant, by himself, or his agent, or attorney, that the demurrer is not interposed for delay merely. To be sworn to.

(1268.) SEC. 43. If the complaint be amended, a copy of the amendment shall be filed, or the court may, in its discretion, require the complaint as amended to be filed, and a copy of the amendments shall be served upon every defendant to be affected thereby, or upon his attorney if he has appeared by attorney. The defendant shall answer in such time as may be ordered by the court, and judgment by default may be entered upon failure to answer, as in other cases. Amending complaint.

(1269.) SEC. 44. When any of the matters enumerated in section forty do not appear upon the face of the complaint, the objection may be taken by answer. Objections.

(1270.) SEC. 45. If no such objection be taken, either by demurrer or answer, the defendant shall be deemed to have waived the same, excepting only the objection to the jurisdiction of the court, and the objection that the complaint does not state facts sufficient to constitute a cause of action. Waiver of objections.

(1271.) SEC. 46. The answer of the defendant shall contain: First—If the complaint be verified, a specific denial to each allegation of the complaint, controverted by the defendant, or a denial thereof according to his information and belief; if the complaint be not verified, then a general denial to each of such allegations; but a general denial shall only put in issue the material and express allegations of the complaint. Second—A statement of any new matter or counter claim constituting a defense, in ordinary and concise language. Answer, what to contain.

(1272.) SEC. 47. The counter claim mentioned in the last section, shall be one existing in favor of the defendant and against a plaintiff, between whom a several judgment might be had in the action, and arising out of one of the following causes of action: First—A cause of action arising out of the transaction set forth in the complaint as the foundation of the plaintiff's claim, or connected with the subject of the action. Second—In an action arising upon contract, any other cause of action arising also upon contract and existing at the commencement of the action. Counter claim

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(1) As amended Feb. 18, 1876.

Cross demands.

(1273.) Sec. 48. When cross demands have existed between persons under such circumstances that if one had brought an action against the other a counter claim could have been set up, neither shall be deprived of the benefit thereof by the assignment or death of the other, but the two demands [shall] be deemed compensation so far as they equal each other.

Several defenses may be set up.

(1274.) Sec. 49. The defendant may set forth by answer as many defenses and counter claims as he may have. They shall each be separately stated, and the several defenses shall refer to the causes of action which they are intended to answer, in a manner in which they may be intelligibly distinguished.

Demurrer, to answer.

(1275.) Sec. 50. The plaintiff may, within the number of days in which the defendant is by the summons required to answer, said days to be computed from the time of the service on the plaintiff of a copy of such answer, demur to the same for insufficiency, stating in his demurrer the grounds thereof; and he may also, within the same time, demur to one or more of the defenses set up in the answer. Sham and irrelevant answers and defenses, and so much of any answer as may be irrelevant, redundant or immaterial may be stricken out on motion, and upon such terms as the court, in its discretion, may impose.

Pleadings to be subscribed, etc.

(1276.) Sec. 51. Every pleading shall be subscribed by the party or his attorney, and when the complaint is verified by affidavit, the answer shall be verified also, except as provided in the next section.

Verification, when omitted

(1277.) Sec. 52. The verification of the answer required in the last section may be omitted when an admission of the truth of the complaint might subject the party to prosecution for felony.

Genuineness of written instrument admitted.

(1278.) Sec. 53. When an action is brought upon a written instrument, and the complaint contains a copy of such instrument, or a copy is annexed thereto, the genuineness and due execution of such instrument shall be deemed admitted, unless the answer denying the same be verified.

Same.

(1279.) Sec. 54. When the defense to an action is founded upon a written instrument, and a copy thereof is contained in the answer, or a copy is annexed thereto, the genuineness and due execution of such instrument shall be deemed admitted, unless the plaintiff file with the clerk within five days after the service of the answer, or within such other time as the court shall order, an affidavit denying the same.

(1280.) SEC. 55. In all cases of the verification of a pleading, the affidavit of the party shall state that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters, that he believes it to be true. And where a pleading is verified, it shall be by the affidavit of the party, unless he be absent from the county where the attorneys reside, or from some cause unable to verify it, or the facts are within the knowledge of his attorney or other person verifying the same. When the pleading is verified by the attorney, or any other person except the party, he shall set forth in the affidavit the reasons why it is not made by the party. When a corporation is a party, the verification may be made by any officer thereof; or when the Territory, or any officer thereof in its behalf, is a party; the verification may be made by any person acquainted with the facts; except that in actions prosecuted by the attorney general in behalf of the Territory, the pleadings need not, in any case, be verified. **Manner of verifying pleadings.**

(1281.) SEC. 56. It shall not be necessary for a party to set forth in a pleading the items of an account therein alleged, but he shall deliver to the adverse party within five days, or such other time as the court may direct, after a demand thereof, in writing, a copy of the account, or be precluded from giving evidence thereof. The court, or a judge thereof, may order a further account when the one delivered is too general or is defective in any particular. **Items of account need not be set forth.**

(1282.) SEC. 57. If irrelevant or redundant matter be inserted in a pleading, it may be stricken out by the court on motion of any person aggrieved thereby. **Irrelevant matter.**

(1283.) SEC. 58. In an action for the recovery of real property, such property shall be described, with its metes and bounds, in the complaint, or with other equal certainty. **Recovery of real property.**

(1284.) SEC. 59. In pleading a judgment or other determination of a court, or officer of especial jurisdiction, it shall not be necessary to state the facts conferring jurisdiction, but such judgment or determination may be stated to have been duly given or made. If such allegation be controverted, the party pleading shall be bound to establish on the trial the facts conferring jurisdiction. **Judgment.**

(1285.) SEC. 60. In pleading the performance of conditions precedent in a contract, it shall not be necessary to **Conditions precedent.**

state the facts showing such performance; but it may be stated generally that the party duly performed all the conditions on his part; and if such allegation be controverted, the party pleading shall establish on the trial the facts showing such performance.

Private statutes, how pleaded.

(1286.) SEC. 61. In pleading a private statute, or a right derived therefrom, it shall be sufficient to refer to such statute by its title and the day of its passage, and the court shall thereupon take judicial notice thereof.

Libel or slander, in action for.

(1287.) SEC. 62. In an action for libel or slander, it shall not be necessary to state in the complaint any extrinsic facts for the purpose of showing the application to the plaintiff of the defamatory matter out of which the action arose; but it shall be sufficient to state generally that the same was published, or spoken, concerning the plaintiff; and if such allegation be controverted, the plaintiff shall establish on the trial that it was so published or spoken.

Truth may be alleged.

(1288.) SEC. 63. In the actions mentioned in the last section, the defendant may, in his answer, allege both the truth of the matter charged as defamatory; and any mitigating circumstances to reduce the amount of damages; and, whether he prove the justification or not, he may give in evidence the mitigating circumstances.

Several causes of actions in one complaint.

(1289.) SEC. 64. The plaintiff may unite several causes of action in the same complaint, when they all arise out of:

First—Contracts express or implied; or:

Second—Claims to recover specific real property, with or without damages, for the withholding thereof, or for waste committed thereon, and the rents and profits of the same; or:

Third—Claims to recover specific personal property, with or without damage, for the withholding thereof; or:

Fourth—Claims against a trustee, by virtue of a contract, or by operation of law; or:

Fifth—Injuries to character; or:

Sixth—Injuries to person; or:

Seventh—Injuries to property. But the causes of action so united shall all belong to only one of these classes, and shall affect all the parties to the action, and not require different places of trial, and shall be separately stated: *Provided,* however, that an action for malicious arrest and prosecution, or either of them, may be united with an action for either injury to character or to the person.

(1290.) SEC. 65. Every material allegation of the complaint, when it is verified, not specially controverted by the answer, shall for the purpose of the action be taken as true. The allegation of new matter in the answer, shall on the trial be deemed controverted by the adverse party.

Allegations, when taken as true.

(1291.) SEC. 66. A material allegation in a pleading is one essential to the claim, or defense, and which could not be stricken from the pleading without leaving it insufficient. The plaintiff and defendant respectively, may be allowed, on motion, to make a supplemental complaint or answer, alleging facts material to the case, occurring after the former complaint or answer, that the making of supplemental complaint or answer shall not be a waiver of the cause of action set up in the former complaint, or of the defense set up in the former answer. All pleadings subsequent to the complaint must be filed with the clerk and served upon the adverse party, or his attorney.

Material allegations.

Supplemental complaint or answer, when allowed.

(1292.) SEC. 67. After demurrer, and before the trial of issue on demurrer, either party may, within ten days, amend any pleading demurred to, of course, and without costs, filing the same as amended, and serving a copy thereof upon the adverse party or his attorney, who shall have ten days to answer or demur thereto if the pleading be a complaint, or to demur thereto if it be an answer; but a party shall not so amend more than once. When a demurrer to a complaint is overruled, and there is no answer filed, the court may, upon such terms as shall be just, and upon payment of costs, allow the defendant to file an answer. If a demurrer to the answer be overruled, the facts alleged in the answer shall still be considered as denied.

Answer after demurrer.

(1293.) SEC. 68. The court may, in furtherance of justice, and on such terms as may be proper, amend any pleading or proceedings by adding or striking out the name of any party, or by correcting a mistake in the name of the party, or a mistake in any other respect, and may upon like terms enlarge the time for an answer or demurrer, or demurrer to an answer filed. The court may likewise, upon affidavit showing good cause therefor, after notice to the adverse party, allow, upon such terms as may be just, an amendment to any pleading or proceeding in other particulars, and may upon like terms allow an answer to be made after the time limited by this act, and may, upon such terms as may be just, and upon payment of costs, relieve a party or his legal representatives from a judgment, order or other proceeding taken against him through his mistake, inad-

Amendment of pleadings.

vertence, surprise or excusable neglect; and when, from any cause, the summons and a copy of the complaint in an action have not been personally served on the defendant, the court may allow, on such terms as may be just, such defendant or his legal representatives, at any time within six months after the rendition of any judgment in such action, to answer to the merits of the original action.

Time for answer.

Plaintiff ignorant of defendant's name.

(1294.) SEC. 69. When the plaintiff is ignorant of the name of a defendant, such defendant may be designated in any pleading or proceeding by any name, and when his true name is discovered the pleading or proceeding may be amended accordingly.

Pleadings, how construed.

(1295.) SEC. 70. In the construction of a pleading for the purpose of determining its effect, its allegations shall be liberally construed, with a view to substantial justice between the parties.

Error, when to be disregarded.

(1296.) SEC. 71. The court shall in every stage of an action disregard any error or defect in the pleadings or proceedings, which shall not affect the substantial rights of the parties, and no judgment shall be reversed or affected by reason of such error or defect.

TITLE V.

OF THE PROVISIONAL REMEDIES IN CIVIL ACTIONS.

CHAPTER I. Arrest and bail.
CHAPTER II. Claim and delivery of personal property.
CHAPTER III. Injunction.
CHAPTER IV. Attachment.
CHAPTER V. Deposit in court.

CHAPTER I.

ARREST AND BAIL.

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(1297.) SEC. 72. No person shall be arrested in a civil action except as prescribed by this act. No arrest in civil action, except, etc.

(1298.) SEC. 73. The defendant may be arrested, as hereinafter prescribed, in the following cases arising after the passage of this act: First—In an action for the recovery of money or damages on a cause of action arising upon contract, express or implied, when the defendant is about to depart from the Territory with intent to defraud his creditors, or when the action is for libel or slander. Second—In an action for a fine or penalty, or for money or property embezzled, or fraudulently misapplied or converted to his own use by a public officer, or an officer of a corporation, or an attorney, factor, broker, agent or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity or for misconduct or neglect in office, or Arrest. When may be made.

in a professional employment, or for a willful violation of duty. Third—In an action to recover the possession of personal property unjustly detained, when the property or any part thereof has been concealed, removed or disposed of, so that it cannot be found or taken by the Territorial marshal, his deputy, or the sheriff, or his deputy. Fourth—When the defendant has been guilty of a fraud in contracting the debt or incurring the obligation for which the action is brought, or in concealing or disposing of the property, for the taking, detention or conversion of which the action is brought. Fifth—When the defendant has removed or disposed of his property, or is about to do so, with the intent to defraud his creditors.

Order, how obtained.

(1299.) SEC. 74. An order for the arrest of the defendant shall be obtained from a judge of the court in which the action is brought.

Same.

(1300.) SEC. 75. The order may be made whenever it shall appear to the judge, by the affidavit of the plaintiff or some other person, that a sufficient cause of action exists, and the case is one of those mentioned in section seventy-three. The affidavit shall be either positive or upon information and belief; and when upon information and belief, it shall state the facts upon which the information and belief are founded. If an order of arrest be made, the affidavit shall be filed with the clerk of the court.

Plaintiff to give undertaking.

(1301.) SEC. 76. Before making the order the judge shall require a written undertaking, on the part of the plaintiff, with sureties, to the effect that if the defendant recover judgment, the plaintiff will pay all costs and charges that may be awarded to the defendant, and all damages which he may sustain by reason of the arrest, not exceeding the sum specified in the undertaking, which shall be at least five hundred dollars. Each of the sureties shall annex to the undertaking an affidavit that he is a resident and householder or freeholder within the Territory and worth double the sum specified in the undertaking over and above all his debts and liabilities, exclusive of property exempt from execution. The undertaking shall be filed with the clerk of the court.

When order may be made, form.

(1302.) SEC. 77. The order may be made to accompany the summons, or any time afterwards before judgment. It shall require the Territorial marshal, his deputy, the sheriff of the county, or his deputy, where the defendant may be found, forthwith to arrest him and hold him to bail in a specified sum, and to return the order at a time therein mentioned to the clerk of the court in which the action is pending.

(1303.) SEC. 78. The order of arrest, with a copy of the affidavit upon which it is made, shall be delivered to the sheriff, or other officer, who, upon arresting the defendant, shall deliver to him the copy of the affidavit, and also if desired a copy of the order of arrest. Order, duty of sheriff.

(1304.) SEC. 79. The sheriff, or other officer, shall execute the order by arresting the defendant and keeping him in custody until discharged by law. How executed.

(1305.) SEC. 80. The defendant, at any time before execution, shall be discharged from the arrest either upon giving bail or upon depositing the amount of money mentioned in the order of arrest, as provided in this chapter. Defendant, how discharged.

(1306.) SEC. 81. The defendant may give bail by causing a written undertaking, as directed by the judge, to be executed by two or more sufficient sureties, stating their places of residence and occupations, to the effect that they are bound in the amount mentioned in the order of arrest; that the defendant shall at all times render himself amenable to the process of the court during the pendency of the action, and to such as may be issued to enforce the judgment therein; or that they will pay to the plaintiff the amount of any judgment which may be recovered in the action. Bail, how given.

(1307.) SEC. 82. At any time before judgment, or within ten days thereafter, the bail may surrender the defendant in their exoneration; or he may surrender himself to the sheriff, or other officer of the court, where he was arrested. Surrender.

(1308.) SEC. 83. For the purpose of surrendering the defendant, the bail, at any time or place before they are finally charged, may themselves arrest him; or by a written authority, endorsed on a certified copy of the undertaking, may empower the Territorial marshal, or the sheriff to do so. Upon the arrest of the defendant by said officer, or upon his delivery to him by the bail, or upon his own surrender, the bail shall be exonerated: *Provided*, such arrest, delivery or surrender take place before the expiration of ten days after judgment, but if such arrest, delivery, or surrender be not made within ten days after judgment, the bail shall be finally charged on their undertaking, and be bound to pay the amount of the judgment within ten days thereafter. May arrest defendant.

(1309.) SEC. 84. If the bail neglect or refuse to pay the Judgment against.

judgment within ten days after they are finally charged, an action may be commenced against such bail for the amount of such original judgment.

How exonerated.

(1310.) SEC. 85. The bail shall also be exonerated by the death of the defendant, or his imprisonment in the penitentiary, or by his legal discharge from the obligation to render himself amenable to the process.

Proceedings after arrest.

(1311.) SEC. 86. Within the time limited for that purpose, the Territorial marshal, or sheriff, shall file the order of arrest in the office of the clerk of the court in which the action is pending, with his return endorsed thereon, together with a copy of the undertaking of the bail. The original undertaking he shall retain in his possession until filed, as herein provided. The plaintiff within ten days thereafter may serve upon the officer a notice that he does not accept the bail, or he shall be deemed to have accepted them, and the officer shall be exonerated from liability. If no notice be served within ten days; the original undertaking shall be filed with the clerk of the court.

Notice of justification of bail.

(1312.) SEC. 87. Within five days after the receipt of notice, the Territorial marshal, or sheriff, or defendant may give to the plaintiff, or his attorney, notice of the justification of the same, or other bail (specifying the places of residence and occupations of the latter), before the judge of the court, or clerk, at a specified time and place; the time to be not less than five nor more than ten days thereafter, except by consent of parties. In case other bail be given, there shall be a new undertaking.

Qualifications of bail.

(1313.) SEC. 88. The qualifications of bail shall be as follows: First—Each of them shall be a resident, and householder, or freeholder, within the county. Second—Each shall be worth the amount specified in the order of arrest, or the amount to which the order is reduced, as provided in this chapter, over and above all his debts and liabilities, exclusive of property exempt from execution; but the judge or clerk, on justification, may allow more than two sureties to justify severally in amounts less than that expressed in the order, if the whole justification be equivalent to that of two sufficient bail.

Bail, how to justify.

(1314.) SEC. 89. For the purpose of justification, each of the bail shall attend before the judge, or clerk, at the time and place mentioned in the notice, and may be examined on oath, on the part of the plaintiff, touching his sufficiency, in such manner as the judge or clerk in his discretion may think proper. The examination shall be reduced to writing, and subscribed by the bail, if required by the plaintiff.

(1315.) SEC. 90. If the judge, or clerk, find the bail sufficient, he shall annex the examination to the undertaking, endorse his allowance thereon, and cause them to be filed, and the officer shall thereupon be exonerated from liability. Allowance of bail.

(1316.) SEC. 91. The defendant may at the time of his arrest, instead of giving bail, deposit with the Territorial marshal or sheriff, the amount mentioned in the order. In case the amount of the bail be reduced, as provided in this chapter, the defendant may deposit such amount instead of giving bail. In either case the officer shall give the defendant a certificate of the deposit made, and the defendant shall be discharged from custody. Deposit in lieu of bail.

(1317.) SEC. 92. The Territorial marshal, or sheriff, shall immediately after the deposit pay the same into court, and take from the clerk receiving the same two certificates of such payment; the one of which he shall deliver or transmit to the plaintiff, or his attorney, and the other to the defendant. For any default in making such payment, the same proceedings may be had on the official bond of the officer to collect the sum deposited as in other cases of delinquency. Disposition of deposit.

(1318.) SEC. 93. If money be deposited, as provided in the last two sections, bail may be given, and may justify upon notice at any time before judgment; and on the filing of the undertaking and justification with the clerk, the money deposited shall be refunded by such clerk to the defendant. Bail after deposit.

(1319.) SEC. 94. Where money shall have been deposited, if it remain on deposit at the time of a recovery of a judgment in favor of the plaintiff, the clerk shall, under the direction of the court, apply the same in satisfaction thereof, and after satisfying the judgment shall refund the surplus, if any, to the defendant. If the judgment be in favor of the defendant, the clerk shall, under like direction of the court, refund to him the whole sum deposited and remaining unapplied. Application of deposit after judgment.

(1320.) SEC. 95. If after being arrested, the defendant escape or be rescued, the Territorial marshal, or other officer, shall himself be liable as bail; but he may discharge himself from such liability by the giving and justification of bail at any time before judgment. Liability of officer.

(1321.) SEC. 96. If judgment be recovered against the Territorial marshal, or other officer, upon his liability as bail, Judgment against officer.

and an execution thereon be returned unsatisfied, in whole or in part, the same proceedings may be had on his official bond for the recovery of the whole or any deficiency, as in other cases of delinquency.

Vacating the order of arrest.

(1322.) SEC. 97. A defendant arrested may, at any time before the justification of bail, apply to the judge who made the order, or the court in which the action is pending, upon reasonable notice to the plaintiff, to vacate the order of arrest, or to reduce the amount of bail. If the application be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other proofs in addition to those on which the order of arrest was made.

Reduction of bail.

(1323.) SEC. 98. If upon such application it shall satisfactorily appear that there was not sufficient cause for the arrest, the order shall be vacated, or if it satisfactorily appear that the bail was fixed too high, the amount shall be reduced.

CHAPTER II.

CLAIMS AND DELIVERY OF PERSONAL PROPERTY.

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When claim may be made.

(1324.) SEC. 99. The plaintiff in an action to recover the possession of personal property, may, at the time of issuing the summons, or at any time before answer, claim the delivery of such property to him as provided in this chapter.

Affidavit to obtain order for delivery.

(1325.) SEC. 100. Where a delivery is claimed, an affidavit shall be made by the plaintiff, or by some one on his behalf, showing: First—That the plaintiff is the owner of the property claimed (particularly describing it), or is lawfully entitled to the possession thereof. Second—That the property is wrongfully detained by the defendant. Third—The alleged cause of the detention thereof according to his best knowledge, information and belief. Fourth—That the same has not been taken for a tax, assessment or fine, pursuant to a statute, or seized under an execution or an attachment against the property of the plaintiff, or, if so seized, that it is by statute exempt from such seizure; and, Fifth—The actual value of the property.

Delivery.

(1326.) SEC. 101. The plaintiff or his attorney, may thereupon, by indorsement in writing upon the affidavit, require the Territorial marshal, or the sheriff of the county, where the property claimed may be, to take the same from the defendant.

Proceedings on.

(1327.) SEC. 102. Upon a receipt of the affidavit and notice, with a written undertaking, executed by two or more sufficient sureties, approved by the Territorial marshal, or sheriff, to the effect that they are bound to the defendant in double the value of the property, as stated in the affidavit for the prosecution of the action, for the return of the property to the defendants, if return thereof be adjudged, and for the payment to him of such sum as may from any cause be recovered against the plaintiff, the Territorial marshal, or other officer, shall forthwith take the property described in the affidavit, if it be in the possession of the defendant or his agent, and retain it in his custody. He shall also, without delay, serve on the defendant a copy of the affidavit, notice and undertaking, by delivering the same to him personally if he can be found, or to his agent, from whose possession the property is taken; or, if neither can be found, by leaving them at the usual place of abode of either, with some person of suitable age and discretion; or if neither have any known place of abode, by putting them in the nearest post office (postpaid), directed to the defendant.

Sureties excepting to.

(1328.) SEC. 103. The defendant may, within two days after the service of a copy of the affidavit and the undertaking, give notice to the Territorial marshal, his deputy, the sheriff of the county, or his deputy, that he excepts to the sufficiency of the sureties. If he fails to do so, he shall be deemed to have waived all objections to them. When the defendant excepts, the sureties shall justify on notice in like manner as upon bail on arrest; and the Territorial marshal, his deputy, the sheriff of the county, or his deputy; shall be responsible for the sufficiency of the sureties until the objection to them is either waived, as above provided, or until they justify. If the defendant except to the sureties, he cannot reclaim the property, as provided in the next section.

Defendant may require return.

(1329.) SEC. 104. At any time before the delivery of the property to the plaintiff, the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof, upon giving to the Territorial marshal, his deputy, the sheriff of the county, or his deputy, a written undertaking, executed by two or more sufficient sureties, to the effect that they are bound in double the value of the property, as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may for any cause be recovered against the defendant. If a return of the property be not so required within five days after the taking and serving of notice to the defendant, it shall be delivered to the plaintiff, except as provided in section one hundred and nine.

Justification of defendant's sureties.

(1330.) SEC. 105. The defendant's sureties, upon notice to the plaintiff of not less than two or more than five days, shall justify before the judge or the clerk, in the same manner as upon bail on arrest; and upon such justification the Territorial marshal, or the sheriff of the county, shall deliver the property to the defendant. The Territorial marshal, or the sheriff of the county, shall be responsible for the defendant's sureties until they justify, or until the justification is completed or expressly waived, and may retain the property until that time. If they, or others in their place, fail to justify at the time and place appointed, he shall deliver the property to the plaintiff.

Qualification of sureties.

(1331.) SEC. 106. The qualification of sureties and their justification shall be such as are prescribed by this act in respect to bail upon an order of arrest.

Property concealed.

(1332.) SEC. 107. If the property, or any part thereof, be concealed in a building or enclosure, the Territorial marshal, or the sheriff of the county, shall publicly demand its delivery. If it be not delivered, he shall cause the building or enclosure to be broken open, and take the property into his possession; and if necessary, he may call to his aid the power of the county.

Officer to keep property.

(1333.) SEC. 108. When the Territorial marshal, or the sheriff of the county, shall have taken property, as in this chapter provided, he shall keep it in a secure place, and deliver it to the party entitled thereto upon receiving his lawful fees for taking and necessary expenses for keeping the same.

Proceedings when property claimed by other person.

(1334.) SEC. 109. If the property taken be claimed by any other person than the defendant or his agent, and such person make affidavit of his title thereto, or right to possession thereof, stating the grounds of such title or right, and serve the same upon the Territorial marshal, or the sheriff of the county, the Territorial marshal, or the sheriff of the county, shall not be bound to keep the property or deliver it to the plaintiff, unless the plaintiff on demand of him or his agent, indemnify the Territorial marshal, or the sheriff of the county, against such claim by an undertaking, by two sufficient sureties, accompanied by their affidavits, that they are each worth double the value of the property as specified in the affidavit of the plaintiff, over and above their debts and liabilities, exclusive of property exempt from execution, and are freeholders or householders in the county; and no claim to such property by any other person than the defendant or his agent shall be valid against the Territorial marshal, or the sheriff of the county, unless so made.

Notice, etc., to be filed.

(1335.) SEC. 110. The Territorial marshal, or the sheriff of the county, shall file the notice, undertaking or affidavit, with his proceedings thereon, with the clerk of the court in which the action is pending, within twenty days after taking the property mentioned therein.

CHAPTER III.

INJUNCTION.

SECTION.
1336. Injunction defined.
1337. In what case may be granted.
1338. When may be granted.
1339. After answer.
1340. Undertaking.
1341. Order of hearing.

SECTION.
1342. Injunction to suspend business of corporation.
1343. Motion to dissolve or modify.
1344. Court to prescribe rules, etc.
1345. Injunction may be refused, etc.
1346. Dissolution of injunction.

Injunction defined.

(1336.) SEC. 111. An injunction is a writ or order requiring a person to refrain from a particular act. The order or writ may be granted by the court in which the action is brought, or by a judge thereof, and, when made by a judge, may be enforced as the order of the court.

In what cases may be granted.

(1337.) SEC. 112. An injunction may be granted in the following cases:

First—When it shall appear by the complaint that the plaintiff is entitled to the relief demanded, and such relief or any part thereof consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually.

Second—When it shall appear by the complaint or affidavit that the commission or continuance of some act, during the litigation, would produce great or irreparable injury to the plaintiff.

Third—When it shall appear, during the litigation, that the defendant is doing, or threatens, or is about to do or is procuring or suffering to be done, some act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual.

Fourth—An injunction may also be granted on the motion of the defendant, upon filing an answer in the nature of a cross bill praying for affirmative relief upon any of the grounds mentioned above in this section, subject to the same rules and provisions provided for the issuance of injunctions on behalf of the plaintiff.

When may be granted.

(1338.) SEC. 113. The injunction may be granted at the time of issuing the summons upon the complaint, and at any time afterwards, before judgment, upon affidavits or other evidence. The complaint in the one case, and the affidavits or other evidence in the other, shall show satisfactorily that sufficient grounds exist therefor. No injunction shall be granted on the complaint, unless it be verified by the oath of the plaintiff, or some one in his behalf, that he, the person making the oath, has read the complaint or heard the complaint read, and knows the contents thereof, and the same is true of his own knowledge, except the matters therein stated on information and belief, and that as to those matters he believes it to be true. When granted on the complaint, a copy of the complaint and verification attached shall be served with the injunction; when granted upon affidavit, without notice, a copy of the affidavit shall be served with the injunction.

After answer.

(1339.) SEC. 114. An injunction shall not be allowed after the defendant has answered unless upon notice, or upon an order made as provided in section one hundred and sixteen, but in such case the defendant may be restrained until the decision of the court or judge granting or refusing the injunction.

Undertaking.

(1340.) SEC. 115. On granting an injunction, or a restraining order, the court or judge shall require, except where the Territory, a county, or a city is a party plaintiff, a written undertaking, with sufficient sureties, to the effect that the plaintiff will pay to the party enjoined such damages, not exceeding an amount to be specified, as such party may sustain by reason of the injunction, if the court finally decide that the plaintiff was not entitled thereto. (1)

Order of hearing.

(1341.) SEC. 116. If the court or judge deem it proper that the defendant, or any of several defendants, should be heard before granting the injunction, an order shall be made fixing a time and place for hearing the application for the injunction, a copy of which order shall be served upon the person or persons designated therein, and the defendant may in the meantime be restrained. Upon the hearing, the parties may use affidavits, other written evidence and oral testimony.

Injunction to suspend business of corporation.

(1342.) SEC. 117. An injunction or restraining order to suspend the general and ordinary business of a corporation shall not be granted without due notice of the application therefor, to be served in the manner prescribed for service of the summons in the action.

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(1) Sec. (1816.) and (1827.)

Motion to dissolve or modify.

(1343.) SEC. 118. If an injunction be granted without notice, the defendant at any time before the trial, may apply, upon reasonable notice, to the judge who granted the injunction, or to the court in which the action is pending, or a judge thereof, to dissolve or modify the same. The application may be made upon the complaint and the affidavit, or affidavits, on which the injunction was granted, if any were used, or upon affidavits or other testimony on the part of the defendant, with or without the answer. If the application be made upon affidavit, or other evidence, on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence in addition to the affidavits on which the injunction was granted, and the defendant may then in proper cases introduce rebutting affidavits or other evidence: *Provided*, that for the purpose of allowing the plaintiff to introduce further evidence, the answer or verification thereto attached shall be deemed an affidavit.

Court to prescribe rules, etc.

(1344.) SEC. 119. The courts may prescribe by rule the time when, and the cases in which, the service of affidavits to be used upon applications for injunctions, and motions to dissolve injunctions, shall be made; and may also provide by rule for the giving of notice before such hearings, of the kind of testimony to be used, and make all needful rules on the subject of injunctions not in conflict with this or other acts.

Injunction may be refused, etc.

(1345.) SEC. 120. If upon the hearing of an application for an injunction, or for the dissolution of an injunction, it does not satisfactorily appear that there is a sufficient cause for an injunction, or if it appear that the extent of the injunction is too great, it shall be refused, dissolved or modified, as the case may be, and upon all such applications in actions respecting mines, the court, or judge hearing the same, may, instead of granting or continuing the injunction, make an order requiring the party against whom the application is made, to give a bond in an amount fixed by such court or judge, with sufficient sureties, to be approved by such court or judge, conditioned for the payment to the plaintiff, of all damages which he may sustain by reason of the use or occupation of the mine, or other acts complained of, by the party giving the bond, his or its agents, servants, employes, grantees or other persons by his or its consent pending the litigation, if the plaintiff finally recover; or that upon failure to give such bond within the time prescribed in the order, the injunction shall be granted, or continued, as the case may be; or the court or judge, may appoint a receiver, to take charge of the mine, or the proceeds thereof, pending the litigation.

Dissolution of injunction.

(1346.) SEC. 121. It shall be good cause in the discretion of the court, or judge, for the dissolution of an injunction that the plaintiff is doing, or causing, or permitting to be done, some act pending the litigation which, if continued, will be injurious to the defendant if he finally recover, or to the property in dispute. But the court, or judge, hearing a motion to dissolve an injunction, may instead of granting such motion, direct by order that the plaintiff give to the parties restrained a bond conditioned, as provided in section one hundred and twenty, or upon his failure to do so, within the time prescribed in such order, that the injunction shall be dissolved.

CHAPTER IV.

ATTACHMENT.

SECTION.
1347. Attachment.
1348. Writ, how issued.
1349. Undertaking required.
1350. Requirement of writ.
1351. What property may be attached.
1352. How writ should be executed.
1353. Property in hands of other person.
1354. Liability of other persons.
1355. Examination.
1356. Return of officer.
1357. Perishable property to be sold.
1358. Property claimed by third party.
1359. Judgment how satisfied; notice of sale.

SECTION.
1360. Same.
1361. Proceedings when execution returned unsatisfied.
1362. Proceedings when defendant recovers judgment.
1363. Discharge of attachment, when made.
1364. Undertaking of defendant.
1365. Motion for discharge of attachment.
1366. Plaintiff may approve by other evidence.
1367. Discharge of writ.
1368. Return of officer.

Attachment.

(1347.) SEC. 122. The plaintiff, at the time of issuing the summons, or at any time afterwards, may have the property of the defendant attached, as security for the satisfaction of any judgment that may be recovered, unless the defendant give security to pay such judgment, as hereinafter provided in the following cases: In an action upon a contract, which is not secured by mortgage, lien or pledge upon real or personal property, situated or being in this Territory, or, if so secured, when such security has been rendered nugatory by the act of the defendant, against a defendant not residing in this Territory, or against a person who has departed or is about to depart from the Territory or county wherein the action is brought, or who stands in defiance of an officer, or conceals himself so that process cannot be served on him, or who is disposing of his property with intent to defraud his creditors.

Writ, how issued.

(1348.) SEC. 123. The clerk of the court shall issue the writ of attachment upon receiving an affidavit by or on behalf of the plaintiff, which shall be filed, showing: that the defendant is indebted to the plaintiff upon a contract, specifying the nature and amount thereof as near as may be over and above all legal set-offs or counter claims, and that the same has not been secured by any mortgage, lien or pledge upon real or personal property situate or being in this Territory, or, if so secured, that said security has been rendered nugatory by the act of the defendant; and that the same is an actual, *bona fide*, existing demand, due and owing from the defendant to the plaintiff, and that the attachment is not sought and the action is not prosecuted to hinder, delay or defraud any creditor of the defendant, and specifying one or more of the causes set forth in the preceding section.

Undertaking required.

(1349.) SEC. 124. Before issuing the writ the clerk shall require a written undertaking on the part of the plaintiff, in a sum not less than two hundred dollars, nor exceeding the amount claimed by the plaintiff, with sufficient sureties, to the effect that if the defendant recover judgment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking. (1)

Requirement of writ.

(1350.) SEC. 125. The writ shall be directed to the Territorial marshal, his deputy, or the sheriff of any county, in which property of such defendant may be, and require him to attach and safely keep *all the property* of such defendant within the county not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which shall be stated in conformity with the complaint, unless the defendant give him security by the undertaking, of at least two sufficient sureties, in an amount sufficient to satisfy such demand, besides cost, in which case to take such undertaking. Several writs may be issued at the same time to the Territorial marshal, his deputy, or the sheriffs of different counties.

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(1) Sec. (1816) and (1827.)

What property may be attached.

(1351.) SEC. 126. The rights or shares which the defendant may have in the stock of any corporation or company, together with the interest and profits therein, and all debts due such defendant, and all other property in this Territory of such defendant not exempt from execution, may be attached, and if judgment be recovered, be sold to satisfy the judgment and execution.

How writ should be executed.

(1352.) SEC. 127. The Territorial marshal, his deputy, the sheriff of the county, or his deputy, to whom the writ is directed and delivered shall execute the same without delay, and if the undertaking mentioned in section one hundred and twenty-six [125] be not given—as follows:

First—Real property shall be attached by leaving a copy of the writ with the occupant thereof; or if there be no occupant, by posting a copy in a conspicuous place thereon, and filing a copy, together with a description of the property attached, with the recorder of the county.

Second—Personal property capable of manual delivery shall be attached by taking it into custody.

Third—Stock or shares, or interest in stock or shares, of any corporation or company, shall be attached by leaving with the president, or other head of the same, or the secretary, cashier, or managing agent thereof, a copy of the writ, and a notice stating the stock or interest of the defendant is attached in pursuance of such writ.

Fourth—Debts and credits, and other personal property, not capable of manual delivery, shall be attached by leaving with the person owing such debts, or having in his possession, or under his control, such credits or other personal property, a copy of the writ, and a notice that the debts owing by him to the defendant, or the credits and other personal property in his possession or under his control belonging to the defendant, are attached in pursuance of such writ.

Property in hands of other person.

(1353.) SEC. 128. Upon receiving information in writing from the plaintiff or his attorney, that any person has in his possession, or under his control, any credits or other personal property belonging to the defendant, or is owing any debt to the defendant, the Territorial marshal, or the sheriff of the county, shall serve upon such person a copy of the writ, and a notice that such credits, or other property or debts, as the case may be, are attached in pursuance of such writ.

Liability of other persons.

(1354.) SEC. 129. All persons having in their possession, or under their control, any credits or other personal property belonging to the defendant, or owing any debts to the defendant at the time of service upon them of a copy of the writ and notice, as provided in the two last sections, shall be, unless such property is delivered up or transferred, or such debts be paid to the Territorial marshal, or the sheriff of the county, liable to the plaintiff for the amount of such credits, property or debts, until the attachment be discharged, or any judgment recovered by him be satisfied.

Examination.

(1355.) SEC. 130. Any person owing debts to the defendant, or having in his possession or under his control any credits or other personal property, belonging to the defendant, may be required to attend before the court, or judge, or a referee appointed by the court, or judge, and be examined on oath respecting the same. The defendant may also be required to attend for the purpose of giving information respecting his property, and may be examined on oath. The court, or judge, may, after such examination, order personal property capable of manual delivery to be delivered to the Territorial marshal, or the sheriff of the county, on such terms as may be just, having reference to any liens thereon or claims against the same, and a memorandum to be given of all other personal property, containing the amount and description thereof.

Return of officer.

(1356.) SEC. 131. The Territorial marshal, or the sheriff of the county shall make a full inventory of the property attached, and return the same with the writ. To enable him to make such returns as to debts and credits attached, he shall request, at the time of service, the party owing the debt, or having the credit, to give him a memorandum stating the amount and description of each; and if such memorandum be refused, he shall return the fact of refusal with the writ. The party refusing to give the memorandum, may be required to pay the costs of any proceeding, taken for the purpose of obtaining information respecting the amount and description of such debt or credit.

(1357.) SEC. 132. If any of the property attached be perishable, the Territorial marshal, or the sheriff of the county, shall sell the same in the manner in which such property is sold on execution. The proceeds and other property attached by him shall be retained by him, to answer any judgment that may be recovered in the action, unless sooner subject to execution upon another judgment recovered previous to the issuing of the attachment. Debts and credits attached may be collected by him, if the same can be done without suit. The receipt of the Territorial marshal, or the sheriff of the county, shall be a sufficient discharge for the amount paid.

Perishable property to be sold.

(1358.) SEC. 133. If any personal property attached be claimed by a third person as his property, the Territorial marshal, or the sheriff of the county, may summon a jury of six men to try the validity of such claim; and such proceedings shall be had thereon, with the like effect, as in case of a claim after levy upon execution.

Property claimed by third party.

(1359.) SEC. 134. If judgment be recovered by the plaintiff, the Territorial marshal, or the sheriff of the county, shall satisfy the same out of the property attached by him which has not been delivered to the defendant, or a claimant as hereinafter provided, or subjected to execution on another judgment recovered previous to the issuing of the attachment, if it be sufficient for that purpose: First—By paying to the plaintiff the proceeds of all sales of perishable property sold by him, or of any debts or credits collected by him, or so much as shall be necessary to satisfy the judgment. Second—If any balance remain due, and an execution shall have been issued on the judgment, he shall sell under the execution, so much of the property, real or personal, as may be necessary to satisfy the balance, if enough for that purpose remain in his hands. Notice of the sales shall be given, and the sales conducted as in other cases of sales on execution.

Judgment, how satisfied.

Notice of sale.

(1360.) SEC. 135. If, after selling all the property attached by him remaining in his hands, and applying the proceeds, together with the proceeds of any debts or credits collected by him, deducting the fees, to the payment of the judgment, any balance shall remain due, the Territorial marshal, or the sheriff of the county, shall proceed to collect

Same.

such balance as upon an execution in other cases. Whenever the judgment shall have been paid, the Territorial marshal, or the sheriff of the county, upon reasonable demand, shall deliver over to the defendant the attached property remaining in his hands, and any proceeds of the property attached unapplied on the judgment.

Proceedings when execution returned unsatisfied.

(1361.) SEC. 136. If the execution be returned unsatisfied, in whole or in part, the plaintiff may prosecute any undertaking given pursuant to section one hundred and twenty-six [125], or section one hundred and forty [139], or he may proceed as in other cases upon the return of an execution.

Proceedings when defendant recovers judgment.

(1362.) SEC. 137. If the defendant recover judgment against the plaintiff, any undertaking received in the action, all the proceeds of sales and money collected by the Territorial marshal, or the sheriff of the county, and all the property attached remaining in the hands of the Territorial marshal, or the sheriff of the county, shall be delivered to the defendant or his agent; the order of attachment shall be discharged and the property released therefrom.

Discharge of attachment, when made.

(1363.) SEC. 138. Whenever the defendant shall have appeared in the action, he may apply, upon reasonable notice to the plaintiff, to the court in which the action is pending, or to the judge thereof, for an order to discharge the attachment, wholly or in part, upon the execution and filing of the undertaking mentioned in the next section. Such order may be granted directing the release from the operation of the attachment, upon the filing of such undertaking and the justification of the sureties thereon, if required by the plaintiff, of all or any part of the property, money, debts or credits attached as the case may be. All the proceeds of sales and moneys collected by the Territorial marshal, or the sheriff of the county, and all the property attached remaining in his hands, so released, shall be delivered or paid to the defendant upon the filing of such undertaking and making such justification, if required by the plaintiff.

Undertaking of defendant.

(1364.) SEC. 139. On granting such order the court or the judge shall require an undertaking on behalf of the defendant, with at least two sureties, residents and freeholders or householders in the county, which shall be filed to the effect in case the value of the property or the amount of money, debts or credits sought to be released shall equal or exceed the amount claimed by the plaintiff in the complaint, that the defendant will pay to the plaintiff the amount of the judgment which may be recovered in favor of the plaintiff in the action, not exceeding the sum specified in the undertaking, which shall be at least double the amount so claimed by the plaintiff; or to the effect, in case the value of the property or the amount of money, debts or credits sought to be released shall be less than the amount so claimed by the plaintiff, thatthe defendant will pay the amount of such judgment to the extent of the value of the property, or amount of money, or debts or credits sought to be released, not exceeding the sum specified in the undertaking, which shall be at least double the value of such property, money, debts or credits. (1) The value of such property sought to be released, if disputed, shall be determined by the court or the judge [thereof upon proof, or by a sworn appraiser, or sworn appraisers, not exceeding three, to be appointed by the court or judge] (2) for that purpose. Before filing the undertaking the defendant shall serve a copy thereof upon the plaintiff, and if the plaintiff require a justification by the sureties, he shall give notice thereof to the defendant within two days, or at the time of giving notice of motion for an order to discharge the attachment, the defendant may in his notice name the sureties; and if the plaintiff require them to justify, he shall give notice thereof at the hearing of the motion. If required, the sureties shall justify before the court in which the suit is pending, or the judge thereof, after reasonable notice.

Motion for discharge of attachment. (1365.) SEC. 140. The defendant may also, any time before the time of answering expires, apply on motion, upon reasonable notice to the plaintiff, to the court in which the action is brought, or to the judge thereof, for the discharge of the attachment, on the ground that the writ was improperly issued.

Plaintiff may oppose by other evidence. (1366.) SEC. 141. If the motion be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence, in addition to those on which the writ of attachment was issued.

Discharge of writ. (1367.) SEC. 142. If upon such application, it shall satisfactorily appear that the writ of attachment was improperly issued, it shall be discharged.

Return of officer. (1368.) SEC. 143. The Territorial marshal, or the sheriff of the county, shall return the writ of attachment with the summons, if issued at the same time; otherwise within twenty days after its receipt, with a certificate of his proceeding endorsed thereon or attached thereto.

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(1) See (1816.) and (1827.)
(2) Published in former volume, but does not appear in enrolled bill.

CHAPTER V.

DEPOSIT IN COURT.

SECTION.
1369. Court may order delivery.

SECTION.
1370. Appointment of receiver.

Court may order delivery

(1369.) SEC. 144. When it is admitted, by the pleading or examination of a party, that he has in his possession or under his control, any money or other thing capable of delivery, which being the subject of litigation is held by him as trustee for another party, or which belongs or is due to another party, the court may order the same, upon motion, to be deposited in court, or delivered to such party, upon such condition as may be just, subject to the further direction of the court.

Appointment of receiver.

(1370.) SEC. 145. A receiver may be appointed by the court in which the action is pending, or by a judge thereof: First—Before judgment, provisionally, on the application of either party, when [he] establishes a *prima facie* right to the property, or an interest in the property which is the subject of the action, and which is in the possession of an adverse party, and the property or its rents and profits are in danger of being lost or materially injured or impaired. Second—After judgment to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal; and Third—In such other cases as are in accordance with the practice of courts of equity jurisdiction.

TITLE VI.

OF THE TRIAL AND JUDGMENT IN CIVIL ACTIONS.

CHAPTER I. Judgment in general.
CHAPTER II. Judgment upon failure to answer.
CHAPTER III. Of issues and the manner of their disposition.
CHAPTER IV. Trial by jury.
CHAPTER V. Trial by court.
CHAPTER VI. Of references and trial by referee.
CHAPTER VII. General provisions relating to trials.
CHAPTER VIII. The manner of giving and entering judgment.

CHAPTER I.

JUDGMENT IN GENERAL.

SECTION.
1371. Judgment.
1372. How given.
1373. Against several defendants.

SECTION.
1374. Extent of relief.
1375. Dismissal of action in nonsuit.

(1371.) SEC. 146. A judgment is the final determination of the rights of the parties in the action or proceeding, and may be entered in term or vacation. Judgment.

(1372.) SEC. 147. Judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants; and it may, when the justice of the case requires it, determine the ultimate rights of the parties on each side, as between themselves. How given.

(1373.) SEC. 148. In an action against several defendants, the court may, in its discretion, render judgment against one or more of them, leaving the action to proceed against the others whenever a several judgment is proper. Against several defendants.

(1374.) SEC. 149. The relief granted to the plaintiff, if there be no answer, shall not exceed that which he shall have demanded in his complaint; but in any other case the court may grant him any relief consistent with the case made by the complaint and embraced within the issue. Extent of relief.

(1375.) SEC. 150. An action may be dismissed, or a judgment of nonsuit entered in the following cases: Dismissal of action or nonsuit.

First—By the plaintiff himself at any time before trial, upon the payment of costs, if a counter claim has not been made. If a provisional remedy has been allowed, the undertaking shall thereupon be delivered by the clerk to the defendant, who may have his action thereon.

Second—By either party upon the written consent of the other.

Third—By the court when the plaintiff fails to appear on the trial, and the defendant appears and asks for the dismissal.

Fourth—By the court, when upon trial and before the final submission of the case the plaintiff abandons it.

Fifth—By the court, upon motion of the defendant, when upon the trial the plaintiff fails to prove a sufficient case for the jury. The dismissal mentioned in the first two subdivisions shall be made by an entry in the clerk's register. Judgment may thereupon be entered accordingly. In every other case the judgment shall be rendered on the merits.

CHAPTER II.

JUDGMENT UPON FAILURE TO ANSWER.

SECTION 1376. Judgment on failure to answer.

Judgment on failure to answer.

(1376.) SEC. 151. Judgment may be had, if the defendant fail to answer the complaint, as follows:

First—In an action arising upon contract for the recovery of money or damages only, if no answer has been filed with the clerk of the court within the time specified in the summons, or such further time as may have been granted, the clerk, upon the application of the plaintiff, shall enter the default of the defendant, and immediately thereafter enter judgment for the amount specified in the summons, including the costs, against the defendant, or against one or more of several defendants, in the cases provided for in section thirty-two.

Second—In other actions, if no answer has been filed with the clerk of the court within the time specified in the summons, or such further time as may have been granted, the clerk shall enter the default of the defendant; and thereafter the plaintiff may apply, at the first, or any subsequent term of the court, for the relief demanded in the complaint. If the taking of an account, or the proof of any fact, be necessary to enable the court to give judgment, or to carry the judgment into effect, the court may take the account, or hear the proof, or may, in its discretion, order a reference for that purpose. And where the action is for the recovery of damages, in whole or in part, the court may order the damages to be assessed by a jury; or, if to determine the amount of damages, the examination of a long account be necessary, by reference, as above provided.

Third—In actions where the service of summons was by publication, the plaintiff, upon the expiration of the time designated in the order of publication, may, upon proof of the publication, and that no answer has been filed, apply for judgment; and the court shall thereupon require proof to be made of the demand mentioned in the complaint, and if the defendant be not a resident of the Territory, shall require the plaintiff, or his agent, to be examined on oath respecting any payments that have been made to the plaintiff, or to any one for his use, on account of such demand, and may render judgment for the amount which he is entitled to recover.

CHAPTER III.

OF ISSUES AND THE MANNER OF THEIR DISPOSITION.

SECTION.
1377. When an issue arises.
1378. Of law.
1379. Of fact.
1380. Of law, how tried.
1381. Of fact, how tried.
SECTION.
1382. Entry of cases on calendar.
1383. Either party may bring issue to trial.
1384. Postponement of trial.

When an issue arises.

(1377.) SEC. 152. An issue arises when a fact or conclusion of law is maintained by the one party, and controverted by the other. Issues are of two kinds: First—Of law; and: Second—Of fact.

Of law.

(1378.) SEC. 153. An issue of law arises upon a demurrer to the complaint, or an answer as to some part thereof.

Of fact.

(1379.) SEC. 154. An issue of fact arises: First—Upon a material allegation in the complaint, controverted by the answer; and: Second—Upon new matter in the answer, except an issue of law as joined therein.

Of law, how tried.

(1380.) SEC. 155. An issue of law shall be tried by the court unless it be referred, upon consent, as provided in chapter six of this title.

Of fact, how tried.

(1381.) SEC. 156. An issue of fact shall be tried by a jury, unless a jury trial is waived, or a reference be ordered as provided in this act. Where there are issues, both of law and fact, to the same complaint, the issue of law shall be first disposed of.

Entry of cases on calendar.

(1382.) SEC. 157. The clerk shall enter cases upon the calendar of the court according to the date of the issue, unless otherwise provided by rule of court.

Either party may bring issue to trial.

(1383.) SEC. 158. Either party may bring the issue to trial, or to a hearing, and in the absence of the adverse party, unless the court for good cause otherwise direct, may proceed with the case and take a dismissal of the action, or a verdict or judgment, as the case may require.

Postponement of trial.

(1384.) SEC. 159. A motion to postpone a trial, on the ground of the absence of evidence, shall only be made upon affidavit showing the materiality of the evidence expected to be obtained, and that due diligence has been used to procure it. The court may also require the moving party to state, upon affidavit, the evidence which he expects to obtain; and if the adverse party thereupon admit that such evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the trial shall not be postponed. The party obtaining the postponement of a trial shall also, if required by the adverse party, consent that the testimony of any witness of such adverse party, who is in attendance, be then taken by deposition before the judge or clerk of the court in which the case is pending, or before such other officer as the court may indicate, which shall accordingly be done, and the testimony so taken may be read on the trial with the same effect, and subject to the same objections as if the witness were produced. In actions involving the title to mining claims and quartz ledges, if it be made to appear to the satisfaction of the court that in order that justice may be done, and the action fairly tried on its real merits, it is necessary that further developments should be made, and that the party applying has been guilty of no laches and is acting in good faith, the court shall grant the postponement of the trial of the action, giving the party a reasonable time in which to prepare for trial. And in granting such postponement, the court may, in its discretion, annex as a condition thereto, an order that the party obtaining such postponement shall not, pending the trial of the action, remove from the premises in controversy, any valuable quartz rock, earth or ores, and for any violation of an order so made, the court, or judge thereof, may punish for contempt, as in the cases of violation of an order of injunction, and may also vacate the order of postponement.

CHAPTER IV.

TRIAL BY JURY.

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1385. Jury, how drawn.
1386. To be sworn; form of oath.
1387. Challenges.
1388. Challenge for cause.
1389. Challenges, how tried.
1390. Juror becoming sick.
1391. Charge to jury.
1392. Jury may decide in court or retire; duty of officers.
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SECTION.
1395. Proceedings when jury discharged without verdict.
1396. Final adjournment jury discharged.
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1399. How recorded.
1400. Verdict, kind of.
1401. When to find amount of recovery.
1402. In action to recover specific property.
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ARTICLE I.—FORMATION OF THE JURY.

Jury, how drawn.

(1385.) SEC. 160. When the action is called for trial by jury, the clerk shall prepare separate ballots, containing the names of the jurors summoned who have appeared and not been excused, and deposit them in a box. He shall then draw from the box twelve names, and the persons whose names are drawn shall constitute the jury. If the ballots become exhausted before the jury is complete, or if from any cause a juror or jurors be excused or discharged, the Territorial marshal, or the sheriff of the county shall summon, under the direction of the court, from the citizens of the county, and not from bystanders, so many qualified persons as may be necessary to complete the jury. (1) The jury shall consist of twelve persons, unless the parties consent to a less number. The parties may consent to any number not less than four. Such consent shall be entered by the clerk in the minutes of the trial.

To be sworn, form of oath.

(1386.) SEC. 161. As soon as the jury is completed, an oath or affirmation shall be administered to the jurors, in substance that they, each of them, will well and truly try the matter in issue between———, the plaintiff, and———, the defendant, and that they will have no communication with any person on the subject matter of the trial, except with a fellow juror, until they have agreed upon their verdict, or been discharged by the court, and a true verdict rendered according to the law and the evidence. If the jury shall retire to deliberate upon their verdict, they shall be placed in charge of the Territorial marshal, or the sheriff of the county, who shall keep them separate and apart from all others, and from separating, until they shall have agreed upon their verdict, or been discharged by the court. If necessary, it shall be the duty of the Territorial marshal, or the sheriff of the county, at the charge of the parties to the action, to provide food for the jury.

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(1) The manner of filling up the panel when jury box is exhausted is prescribed in section 4 of an act of Congress entitled "An act in relation to courts and judicial officers in the Territory of Utah," see p. 54.

Challenge.

(1387.) SEC. 162. Either party may challenge the jurors; but when there are several parties on either side, they shall join in a challenge before it can be made, unless the court otherwise order or direct. The challenges shall be to individual jurors, and shall either be peremptory or for cause. Each party shall be entitled to six (1) peremptory challenges.

Challenge for cause.

(1388.) SEC. 163. Challenges for cause may be taken on one or more of the following grounds:

First—A want of any of the qualifications prescribed by statute to render a person competent as a juror.

Second—Consanguinity within the third degree to either party.

Third—Standing in the relation of debtor or creditor, guardian and ward, master and servant, employer and clerk, or principal and agent to either party; or being a member of the family of either party; or a partner, or united in business with either party; or being security on any bond or obligation for either party.

Fourth—Having served as a juror or been a witness on a previous trial between the same parties for the same cause of action; or being then a witness therein.

Fifth—Pecuniary interest on the part of the juror in the event of the action, or in the main question involved in the action; except the interest of the juror as a member or citizen of a municipal corporation.

Sixth—Having formed or expressed an unqualified opinion or belief as to the merits of the action; or the main question involved therein: *Provided*, that the reading of newspaper accounts of the subject matter before the court shall not disqualify a juror either for bias or opinion.

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(1) [Three.] See "Act in relation to courts and judicial officers," p. 56.

Seventh—The existence of a state of mind in the juror, evincing enmity against, or bias to either party.

Challenge, how tried.

(1389.) SEC. 164. Challenges for cause shall be tried by the court. The juror challenged, and any other person may be examined as a witness on the trial of the challenge.

ARTICLE II.—CONDUCT OF THE TRIAL.

Juror becoming sick.

(1390.) SEC. 165. If, after the impaneling of the jury, and before a verdict, a juror become sick, so as to be unable to perform his duty, the court may order him to be discharged. In that case the trial shall proceed with the other jurors: *Provided*, the jury be not reduced to less than two-thirds of the original number sworn. Should the jury be reduced to a less number than two-thirds from such cause, the remaining jurors shall be discharged, and a new jury may then or afterwards be impaneled.

Charge to jury.

(1391.) SEC. 166. In charging the jury, the court shall state to them such matters of law as it thinks necessary for their information in giving their verdict, and shall give, or refuse to give, such other instructions, upon points of law, as either party may request; and if it state the testimony of the case, it shall also inform the jury that they are the exclusive judges of all questions of fact. The court shall furnish to either party, at the time, upon request, a statement in writing of the points of law contained in the charge, or shall sign, at the time, a statement of such points prepared and submitted by the counsel of either party.

Jury may decide in court, or retire.

(1392.) SEC. 167. After hearing the charge, the jury may either decide in court, or retire for deliberation. If they retire, they shall be kept together in a room or some other convenient place provided for them, under the charge of one or more officers, until they agree upon their verdict, or are discharged by the court. The officer shall, to the utmost of his ability, keep the jury separate from other persons; he shall not suffer any communication to be made to them, or make any himself, unless by order of the court, except to ask them if they have agreed upon their verdict; and he shall not, before the verdict is rendered, communicate to any person the state of their deliberations, or the verdict agreed upon.

Duty of officer

What papers jury may take.

(1393.) SEC. 168. Upon retiring for deliberation, the jury may take with them all papers (except depositions) which have been received as evidence in the cause, or copies of such papers as ought not, in the opinion of the court, to be taken from the person having them in possession; and they may also take with them notes of the testimony, or other proceedings on the trial, taken by themselves or any of them; but none taken by any other person.

Return of jury for instructions.

(1394.) SEC. 169. After the jury have retired for deliberation, if there be a disagreement between them as to any part of the testimony, or if they desire to be informed of any point of law arising in the cause, they may require the officer to conduct them into court. Upon their being brought into court, the information required shall be given in the presence of, or after notice to, the parties or counsel.

Proceedings when jury discharged without verdict.

(1395.) SEC. 170. In all cases where a jury are discharged, or prevented from giving a verdict by reason of accident or other cause during the progress of the trial, or after the cause is submitted to them, the action may be again tried, immediately or at a future time, as the court shall direct.

Final adjournment, jury discharged.

(1396.) SEC. 171. While the jury are absent, the court may adjourn from time to time in respect to other business, but it shall nevertheless be deemed open for every purpose connected with the cause submitted to the jury until a verdict is rendered or the jury discharged. The court may direct the jury to bring in a sealed verdict at the opening of the court, in case of an agreement during a recess or adjournment for the day. A final adjournment of the court for the term shall discharge the jury.

Verdict.

(1397.) SEC. 172. When the jury have agreed upon their verdict they shall be conducted into court by the officer having them in charge. Their names shall be called, and they shall be asked by the court, or the clerk, whether they have agreed upon their verdict; and if the foreman answer in the affirmative, they shall deliver the same to the clerk.

May be corrected.

(1398.) SEC. 173. If the verdict be informal or insufficient in not covering the whole issue or issues submitted, the verdict may be corrected by the jury under the advice of the court, or the jury may again be sent out.

How recorded.

(1399.) SEC. 174. When the verdict is given, which must be by unanimous agreement, except by the consent of parties, it shall be read aloud by the clerk in open court, and if not informal or insufficient, it shall immediately be recorded in full in the minutes.

ARTICLE III.—THE VERDICT.

Verdict, kind of.

(1400.) SEC. 175. The verdict of the jury is either general or special. A general verdict is that by which they pronounce generally upon all or any of the issues, either in favor of the plaintiff or defendant; a special verdict is that by which the jury find the facts only, leaving the judgment to the court. The special verdict shall present the conclusions of fact as established by the evidence, and not the evidence to prove them; and those conclusions of fact shall be so presented as that nothing shall remain to the court but to draw from them conclusions of law. All verdicts shall be given in writing and be signed by the foreman of the jury.

When to find amount of recovery.

(1401.) SEC. 176. When a verdict is found for the plaintiff, in an action for the recovery of money, or for the defendant, when a counter claim for the recovery of money is established exceeding the amount of the plaintiff's claim as established, the jury shall also find the amount of the recovery.

In action to recover specific property.

(1402.) SEC. 177. In an action for the recovery of specific personal property, if the property has not been delivered to the plaintiff, or the defendant, by his answer, claim a return thereof, the jury, if their verdict be in favor of the plaintiff, or if, being in favor of the defendant, they also find that he is entitled to a return thereof, shall find the value of the property, and may, at the same time, assess the damages, if any are claimed in the complaint or answer, which the prevailing party has sustained by reason of the taking or detention of such property.

Entry in minutes.

(1403.) SEC. 178. Upon receiving a verdict, an entry shall be made by the clerk in the minutes of the court, specifying the time of trial, the names of the jurors and witnesses, and the verdict; and where a special verdict is found, either the judgment rendered thereon, or if the case be reserved for argument or further consideration, the order thus reserving it.

CHAPTER V.

TRIAL BY COURT.

SECTION.
1404. Jury trial may be waived.
1405. Decisions of court.
SECTION.
1406. Chancery cases.

Jury trial may be waived.

(1404.) SEC. 179. Trial by jury may be waived by the several parties to an issue of fact in actions arising on contract, and with the assent of the court in other actions, in the manner following: First—By failing to appear at the trial. Second—By written consent, in person, or by attorney, filed with the clerk. Third—By oral consent in open court, entered in the minutes.

Decisions of court.

(1405.) SEC. 180. Upon the trial of an issue of fact by the court, its decision shall be given in writing, and filed with the clerk, within ten days after the trial shall have taken place. In giving the decision, the facts found and the conclusions of law shall be separately stated. Judgment upon the decision shall be entered accordingly.

Chancery cases.

(1406.) SEC. 181. On a judgment upon an issue of law, if the taking of an account be necessary to enable the court to complete the judgment, a reference may be ordered. Chancery cases may be tried by the court, with or without the finding of a jury, upon issues designated by the court.

CHAPTER VI.

OF REFERENCES AND TRIAL BY REFEREE.

SECTION.
1407. Order of reference.
1408. Same.
1409. Number of persons to whom ordered.
1410. Referees, objection to appointment.
1411. Objections, how disposed of.
1412. Report of referee.

Order of reference.

(1407.) SEC. 182. A reference may be ordered upon the agreement of the parties, filed with the clerk, or entered in the minutes. First—To try any or all of the issues in an action or proceeding, whether of fact or of law, and to report a judgment thereon. Second—To ascertain a fact necessary to enable the court to proceed and determine the case.

Same.

(1408.) SEC. 183. When the parties do not consent, the court may, upon the application of either, or of its own motion, direct a reference in the following cases: First—When the trial of an issue of facts requires the examination of a long account on either side; in which case the referee may be directed to hear and decide the whole issue, or report upon any specific question of fact involved therein. Second—When the taking of an account is necessary for the information of the court before judgment, or for carrying a judgment or order into effect. Third—When a question of fact, other than upon the pleadings, arises upon motion or otherwise in any stage of the action; or, Fourth—When it is necessary for the information of the court in a special proceeding.

Number of persons to whom ordered.

(1409.) SEC. 184. A reference may be ordered to any person or persons, not exceeding three, agreed upon by the parties. If the parties do not agree, the court or judge shall appoint one or more referees, not exceeding three, who reside in the county, in which the action or proceeding is triable, and against whom there is no legal objection.

Referees, objection to appointment.

(1410.) SEC. 185. Either party may object to the appointment of any person as referee on one or more of the following grounds:

First—A want of any of the qualifications prescribed by statute to render a person competent as a juror.

Second—Consanguinity within the third degree to either party.

Third—Standing in the relation of guardian and ward, master and servant, employer and clerk, or principal and agent to either party, or being a member of the family of either party, or a partner in business with either party, or being security on any bond or obligation for either party.

Fourth—Having served as a juror or been a witness on any trial between the same parties for the same cause of action, or being then a witness in the cause.

Fifth—Pecuniary interest on the part of such person in the event of the action, or in the main question involved in the action.

Sixth—Having formed or expressed an unqualified opinion or belief as to the merits of the action.

Seventh—The existence of a state of mind in such person evincing enmity against or bias to either party.

Objections, how disposed of.

(1411.) SEC. 186. The objections taken to the appointment of any person as referee shall be heard and disposed of by the court. Affidavits may be read and any person examined as a witness as to such objections.

Report of referee.

(1412.) SEC. 187. The referees shall make their report within ten days after the testimony before them is closed. Their report upon the whole issue shall stand as the decision of the court, and upon filing the report with the clerk of the court, judgment may be entered thereon in the same manner as if the action had been tried by the court. The decision of the referees may be excepted to and reviewed in like manner as if made by the court. When the reference is to report the facts, the report shall have the effect of a special verdict.

CHAPTER VII.

GENERAL PROVISIONS RELATING TO TRIALS.

SECTION.
1413. Exception defined.
1414. How taken; proviso.
1415. Same.
1416. When implied.
1417. New trial.

SECTION.
1418. For what cause granted.
1419. Application, how made.
1420. Pre-requisites to motion for.
1421. Application, when to be made.

ARTICLE I.—EXCEPTIONS.

Exception defined.

(1413.) SEC. 188. An exception is an objection taken at the trial to a decision upon a matter of law, whether such trial be by jury, court or referees, and whether the decision be made during the formation of a jury, or in the admission of evidence, or in the charge to a jury, or at any other time from the calling of the action for trial to the rendering of the verdict or decision. But no exception shall be regarded on a motion for a new trial, or on an appeal, unless the exception be material, and affect the substantial rights of the parties.

How taken.

(1414.) SEC. 189. The point of the exception shall be particularly stated, and may be delivered in writing to the judge, or, if the party require it, shall be written down by the clerk. When delivered in writing, or written down by the clerk, it shall be made conformable to the truth, or be at the time corrected until it is so made conformable. When not delivered in writing or written down as above, it may be entered in the judge's minutes and afterwards settled in a statement of the case, as provided in this act: *Provided*, that if the judge shall in any case refuse to allow an exception in accordance with the facts, any party aggrieved thereby may petition the supreme court for leave to prove the same, and shall have the right so to do, in such mode and manner, and according to such regulations as the supreme court may by rules impose, and such exceptions as are allowed by said supreme court shall become a part of the record of the cause.

Proviso.

Same.

(1415.) SEC. 190. No particular form of exception shall be required. The objection shall be stated with so much of the evidence, or other matter, as is necessary to explain it, but no more, and the whole as briefly as possible.

When implied. (1416.) Sec. 191. When a cause has been tried by the court, or by referees, and the decision or report is not made immediately after the closing of the testimony, the decision or report shall be deemed excepted to on motion for a new trial or on appeal, without any special notice that an exception is taken thereto.

ARTICLE II.—NEW TRIALS.

New trial. (1417.) Sec. 192. A new trial is a re-examination of an issue of fact in the same court after a trial and decision by a jury, court, or referees.

For what causes granted. (1418.) Sec. 193. The former verdict or other decision may be vacated and a new trial granted on the application of the party aggrieved for any of the following causes materially affecting the substantial rights of such party:

First—Irregularity in the proceeding of the court, jury, or adverse party, or any order of the court, or abuse of discretion by which either party was prevented from having a fair trial.

Second—Misconduct of the jury.

Third—Accident, or surprise, which ordinary prudence could not have guarded against.

Fourth—Newly discovered evidence, material for the party making the application, which he could not with reasonable diligence have discovered and produced at the trial.

Fifth—Excessive damages.

Sixth—Insufficiency of the evidence to justify the verdict or other decision; or that it is against law.

Seventh—Error in law occurring at the trial and accepted to by the party making the application.

Application, how made. (1419.) Sec. 194. When the application is made for a cause mentioned in the first, second, third and fourth subdivisions of the last section, it shall be made upon affidavit; for any other cause it shall be made upon a statement prepared, as provided in the next section.

Pre-requisites, to motion for. (1420.) Sec. 195. The party intending to move for a new trial shall give notice of the same as follows: When the action has been tried by a jury, within five days after the rendition of the verdict, and when the action has been tried by the court or by a referee within ten days after receiving written notice of the rendering of the decision of the judge, or of the filing the report of the referee. The notice shall designate generally the grounds upon which the motion will be made. Within five days after giving such notice, the said party shall prepare and file with the clerk the affidavit or statement required by the last section. A copy of the affidavit shall on the same day be served on the adverse party. The party preparing the statement shall number the pages and lines thereof, and after having filed the same with the clerk, and had such filing entered and endorsed, shall serve the same on the adverse party on the same day, who may propose amendments thereto, referring to the page and line of the statement, and shall within five days after the service on him of the statement, file his amendment with the clerk, and after having such filing entered and endorsed, shall on the same day serve the same with the statement upon the moving party, who shall within five days thereafter give written notice to the adverse party if he declines admitting the amendments or they shall be deemed accepted. At any time thereafter either party may have the statement settled by the judge or referee upon two days' notice thereof to the other party. If no affidavit or statement be filed within five days after the notice of new trial, the right to move for a new trial shall be deemed waived. When the notice designates as the ground upon which the motion will be made the insufficiency of the evidence, to justify the verdict or other decision, the statement shall specify the particulars in which such evidence is alleged to be insufficient. When the notice designates as the ground of the motion; error in law occurring at the trial and excepted to by the moving party, the statement shall specify the particular errors upon which the party will rely. If no such specifications be made, the statement shall be disregarded. The statement shall contain so much of the evidence or reference thereto as may be necessary to explain the particular points thus specified and no more. When the statement is agreed to it shall be accompanied with the certificate either of the parties themselves in fact, or their attorney, that the same has been agreed upon and is correct. When settled by the judge or referee, it shall be accompanied with his certificate that the same has been allowed by him and is correct. When no amendments have been filed the statement shall be accompanied with the certificate of the clerk of that fact. On the argument, reference may also be made to the pleadings, depositions and documentary evidence on file, testimony taken and written out by a shorthand reporter, authorized by the court to take the same, and the minutes of the court. If the application be made upon affidavits filed, the adverse party may use counter affidavits on the hearing. Any counter affidavits shall be filed with the clerk and copies served on the moving party, at least two days previous to the hearing. The affidavits and counter affidavits, or the statement thus used, in connection with such pleadings, depositions, documentary evidence on file, testimony taken by reporter and minutes of the court as are read or referred to on the hearing, shall constitute, without further statement, the papers to be used on appeal from the order granting or refusing the new trial. To identify the affidavits, it shall be sufficient for the judge or clerk to endorse them at the time as having been read or referred to on the hearing. To identify any depositions, documentary evidence on file, testimony taken by reporter, or minutes of the court read or referred to on the hearing, it shall be sufficient, that the judge designate them, as having been read or referred to in his certificate to be for that purpose by him made thereon. The several periods of time limited may be enlarged by the written agreement of the parties, or upon good cause shown by the court, or the judge, before whom the cause was tried.

Application, when to be made.

(1421.) SEC. 196. The application for a new trial shall be made at the earliest period practicable after filing the affidavit or statement, and the court or judge granting or refusing a new trial shall state in writing generally the grounds upon which the same is granted or refused.

CHAPTER VIII.

THE MANNER OF GIVING AND ENTERING JUDGMENT.

SECTION.
1422. Judgment, how and when entered.
1423. Argument of case.
1424. Counter claim.
1425. Action for recovery of personal property, etc.
1426. Judgment book.
1427. Death of party.
1428. Judgment roll.
SECTION.
1429. Lien of judgment.
1430. Docket, how kept.
1431. To be open for inspection.
1432. Judgment lien in other counties; duration of lien.
1433. Satisfaction of judgment, how entered.

Judgment, how and when entered.

(1422.) SEC. 197. When trial by jury has been had, judgment shall be entered by the clerk in conformity to the verdict, within twenty-four hours after the rendition of the verdict, unless the court order the case to be reserved for argument or further consideration, or grant a stay of proceedings.

Argument of case.

(1423.) SEC. 198. When the case is reserved for argument or further consideration, as mentioned in the last section, it may be brought by either party before the court for argument.

Counter claim.

(1424.) SEC. 199. If a counter claim, established at the trial, exceed the plaintiff's demand, so established, judgment for the defendant shall be given for the excess; or, if it appear that the defendant is entitled to any other affirmative relief, judgment shall be given accordingly.

Action for recovery of personal property, etc.

(1425.) SEC. 200. In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession, or the value thereof, in case a delivery cannot be had, and damages for the detention, or the value of the use thereof. If the property have been delivered to the plaintiff, and the defendant claim a return thereof, judgment for the defendant may be for a return of the property, or the value thereof, in case a return cannot be had, and damages for taking and withholding the same, or the value of the use thereof. In an action on a contract or obligation for the direct payment of money, judgment for the plaintiff, whether the same be by default or after verdict, or decision of the court or referee, shall be for money only. And in an action against any person for the recovery of money received by such person in a fiduciary capacity, or to the use of another, judgment for the plaintiff, whether the same be by default or after verdict, or decision of the court or referee, may be made payable in the same kind of money or currency so received by such person.

Judgment book.

(1426.) SEC. 201. The clerk shall keep among the records of the court a book for the entry of judgment, to be called the "Judgment Book," in which each judgment shall specify clearly the relief granted, or other determination of the action.

Death of party.

(1427.) SEC. 202. If a party die after a verdict or decision upon any issue of fact, and before judgment, the court may nevertheless render judgment thereon. Such judgment shall not be a lien on the real property of the deceased party, but shall be payable in the course of administration upon his estate.

Judgment roll.

(1428.) SEC. 203. Immediately after entering the judgment the clerk shall attach together and file the following papers, which shall constitute the judgment roll:

First—In case the complaint be not answered by any defendant, the summons, with the affidavit or proof of service, and the complaint, with a memorandum endorsed on the complaint that the default of the defendant in not answering was entered, and a copy of the judgment.

Second—In all other cases the summons, pleadings, verdict of the jury, or findings of the court, the commissioner, or referee; all bills of exception taken and filed in said action, copies of orders, sustaining or overruling demurrers, a copy of the judgment, and copies of any order relating to a change of parties.

Lien of judgment.

(1429.) SEC. 204. Immediately after filing a judgment roll the clerk shall make the proper entries of the judgment, under appropriate heads, in the docket kept by him, and from the time the judgment is docketed it shall become a lien upon all the real property of the judgment debtor not exempt from execution in the county, owned by him at the rendition of the judgment, in his own right. The lien shall continue for two years, unless the judgment be previously satisfied. But the time during which the execution of the judgment is suspended by appeal or action of the court or defendant, shall not be computed.

Docket, how kept.

(1430.) SEC. 205. The docket mentioned in the last section is a book which the clerk shall keep in his office with each page divided into columns: judgment debtors; judgment creditors; judgment; time of entry; where entered in judgment book; appeals; when taken; judgment of appellate court; satisfaction of judgment; when entered. If judgment be for the recovery of money or damages, the amount shall be stated in the docket under the head of judgment; if the judgment be for any other relief, a memorandum of the general character of the relief granted shall be stated. The names of the defendants shall be entered in the docket in alphabetical order.

To be open for inspection.

(1431.) SEC. 206. The docket kept by the clerk shall be open at all times during office hours for the inspection of the public, without charge; and it shall be the duty of the clerk to arrange the several dockets kept by him in such a manner as to facilitate their inspection.

Judgment lien in other counties.

(1432.) SEC. 207. A transcript of the original docket, certified by the clerk, may be filed with the recorder of any other county, and, from the time of the filing the judgment, shall become a lien upon all the real property of the judgment debtor not exempt from execution in such county, owned by him at the rendition of the judgment in his own right. The lien shall continue for two years, unless the judgment be previously satisfied. But the time during which the execution of the judgment is suspended by appeal, or action of the court or defendant, shall not be computed.

Duration of lien.

Satisfaction of judgment, how entered.

(1433.) SEC. 208. Satisfaction of a judgment may be entered in the clerk's docket upon an execution returned satisfied, or upon an acknowledgment of satisfaction filed with the clerk, made in the manner of an acknowledgment of a conveyance of real property, by the judgment creditor, or within one year after the judgment, by the attorney, unless a revocation of his authority be previously filed. Whenever a judgment shall be satisfied in fact, otherwise than upon execution, it shall be the duty of the party or attorney to give such acknowledgment, and upon motion the court may compel it, or may order the entry of satisfaction to be made without it.

TITLE VII.

OF THE EXECUTION OF THE JUDGMENT IN CIVIL ACTIONS.

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CHAPTER I.

THE EXECUTION.

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(1434.) SEC. 209. The party in whose favor judgment is given, may at any time within three years after the entry thereof, issue a writ of execution for its enforcement, as prescribed in this chapter.

Execution may issue.

(1435.) SEC. 210. The writ of execution shall be issued in the name of the Territory of Utah; sealed with the seal of the court, and subscribed by the clerk, and shall be directed to the Territorial marshal, or the sheriff of the county, and shall intelligibly refer to the judgment, stating the court, the county where the judgment roll is filed, the name of the parties, the judgment, and if it be for money, the amount thereof, and the amount actually due thereon, and if made payable in a specified kind of money or currency as provided in section two hundred, the execution shall also state the kind of money or currency in which

Form of writ.

the judgment is payable, and shall require substantially as follows:

First—If it be against the property of the judgment debtor it shall require the officer to satisfy the judgment, with interest, out of the personal property of such debtor; and if sufficient personal property cannot be found, then out of his real property; or if the judgment be a lien upon real property belonging to him on the day when the judgment was docketed, or if the execution be issued to a county other than the one in which the judgment was recovered, on the day when the transcript of the docket was filed in the office of the recorder of such county, stating such day.

Second—If it be against real or personal property in the hands of the personal representatives, heirs, devisees, legatees, tenants of real property, or trustees, it shall require the officer to satisfy the judgment with interest out of such property.

Third—If it be against the person of the judgment debtor, it shall require the officer to arrest such debtor, and commit him to the jail of the county until he pay the judgment with interest or be discharged according to law.

Fourth—If it be issued on a judgment made payable in a specified kind of money or currency as provided in section two hundred, it shall also require the officer to satisfy the same in the kind of money or currency in which said judgment is made payable, and the officer shall refuse payment in any other kind of money or currency; and in case of levy and sale of the property of the judgment debtor, he shall refuse payment from any purchaser at such sale in any other kind of money or currency than that specified in the execution. The officer collecting money or currency in the manner required by this act, shall pay to the plaintiff or party entitled to recover the same, the same kind of money or currency received by him, and in case of neglect or refusal to do so, he may be liable on his official bond to the judgment creditor in any sum not exceeding double the amount of money so collected.

Fifth—If it be for the delivery of the possession of real or personal property, it shall require the officer to deliver the possession of the same, particularly describing it, to the party entitled thereto, and may at the same time require the officer to satisfy any costs, damages, rents, or profits, recovered by the same judgment out of the personal property of the party against whom it was rendered, and the value of the property for which the judgment was recovered, to be specified therein; if a delivery thereof cannot be had, and if sufficient personal property cannot be found, then out of real property, as provided in the first subdivision of this section.

Judgment on joint contract.

(1436.) SEC. 211. When a writ of execution is issued on a judgment recovered against two or more persons in an action upon a joint contract, in which action all the defendants were not served with summons, or did not appear, it shall direct the Territorial marshal, or the sheriff of the county, to satisfy the judgment out of the joint property of all the defendants and the individual property only of the defendants who were served, or who appeared in the action. In other respects the writ shall contain the directions specified in subdivisions one and four of the last section.

When returnable.

(1437.) SEC. 212. The execution may be returnable at any time, not less than ten, nor more than ninety days after its receipt by the officer to the clerk with whom the judgment roll is filed.

Payment of money.

(1438.) SEC. 213. When a judgment requires the payment of money, or the delivery of real or personal property, the same shall be enforced in those respects by execution.

When it requires performance of other act.

(1439.) SEC. 214. Where it requires the performance of any other act, a certified copy of the judgment may be served upon the party against whom it is given, or upon the person or officer who is required thereby, or by law, to obey the same and his obedience thereto enforced.

After death of party.

(1440.) SEC. 215. Notwithstanding the death of a party after the judgment, execution thereon may be issued, in case of the death of the plaintiff, the same as if he were living, upon the application of his executor, or administrator, or successor in interest, to the court in which the judgment was rendered; and in case of the death of the defendant, if the judgment be for the recovery of real or personal property, execution may be issued against such property, in the same manner and with the same effect as if he were still living. (1)

May issue to different counties.

(1441.) SEC. 216. Where the execution is against the property of the judgment debtor, it may be issued to the Territorial marshal, or the sheriff of any county in the Territory. Where it requires the delivery of real or personal property, it shall be issued to the Territorial marshal, or the sheriff of the county, where the property, or some part thereof, is situated. Executions may be issued at the same time to different counties.

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(1) See sec. (865.)

Property liable to execution.

(1442.) SEC. 217. All goods, chattels, moneys, and other property, real and personal, of the judgment debtor, or any interest therein of the judgment debtor not exempt by law, and all property and rights of property seized and held under attachment in the action, shall be liable to execution. Shares and interests in any corporation or company, and debts and credits, and other property not capable of manual delivery, may be attached in execution in like manner as upon writs of attachment. Gold dust and bullion shall be returned by the officer as so much money collected, at its current value, without exposing the same to sale. Until a levy, personal property shall not be affected by the execution.

Proceedings where property is claimed by third party.

(1443.) SEC. 218. If the property levied on be claimed by a third person as his property, the Territorial marshal, or the sheriff of the county, shall summon from the county six persons qualified as jurors between the parties, to try the validity of the claim. He shall also give notice of the claim and the time of trial to the plaintiff, who may appear and contest the claim before the jury. The jury and the witnesses shall be sworn by the officer, and if the verdict be in favor of the claimant, the officer may relinquish the levy, unless the judgment creditor give him a sufficient indemnity for proceeding thereon. The fees of the jury, officer and the witnesses, shall be paid by the claimant, if the verdict be against him; otherwise by the plaintiff.

Property exempt from execution.

(1444.) SEC. 219. The following property shall be exempt from execution, except as herein otherwise provided:

First—Chairs, tables, desks and books, to the value of one hundred dollars, belonging to the judgment debtor.

Second—Necessary household, table and kitchen furniture, belonging to the judgment debtor, including stoves, not to exceed one stove for every five persons of the family, stove pipe and stove furniture, wearing apparel; one bedstead, one bed and the necessary bedding for every two persons in the family, and provisions and fuel for the family sufficient for sixty days.

Third—The farming utensils or implements of husbandry of the judgment debtor, also, two oxen, or two horses, or two mules, and their harness, one cow and calf for every five persons in the family, one cart or wagon, and food for such oxen, horses, cows or mules for sixty days; also, all seed grain, or vegetables actually provided, reserved, or on hand for the purpose of planting or sowing at any time within the ensuing six months, not exceeding in value one hundred dollars.

Fourth—The tools, tool chest and implements of a mechanic or artisan, necessary to carry on his trade, the instruments and chests of a surgeon, physician, surveyor, and dentist, necessary to the exercise of their professions, with their scientific and professional libraries, and the law libraries of an attorney or counselor, and the libraries of ministers of the gospel.

Fifth—The tent or cabin of a miner, including a table, camp stools, bed and bedding, and necessary tools used in mining, not exceeding the value of four hundred dollars, with provisions necessary to his support for thirty days.

Sixth—Two oxen, or two horses, or two mules and their harness, and one cart or wagon, by the use of which a cartman, teamster or other laborer habitually earns his living, and food for such oxen, horses or mules for sixty days; and a horse, harness and vehicle used by a physician, surgeon or minister of the gospel in making his professional visits.

Seventh—One sewing machine, not exceeding in value one hundred dollars, in actual use by the debtor or his family. If the debtor be the head of a family, there shall be a further exemption from execution of five head of sheep and the wool therefrom, for every person in his family, two hogs and three pigs under three months old, and the necessary food for all such animals for sixty days. All flax raised by the debtor and the manufactures therefrom, and all cloth manufactured in the family of the debtor, for their own use. All spinning wheels and looms and other instruments of domestic labor kept for family use. The earnings of such debtor for his personal services or those of his family, at any time within sixty days next preceding the levy are also exempt from execution.

Eighth—All fire engines, hooks and ladders, with the carts, trucks and carriages, hose, buckets, implements and apparatus thereto appertaining, and all furniture and uniforms of any fire company or department now existing, or which may be, under the laws of this Territory, hereafter organized.

Ninth—All arms, ammunitions, uniforms and accoutrements, required by law to be kept by any person.

Tenth—All court houses, jails, public offices and buildings, school houses, houses of public worship, lots, grounds and personal property appertaining thereto; the fixtures, furniture, books, papers, and appurtenances belonging and pertaining to the court house, jail and public offices belonging to any county in this Territory, or for the use of schools or houses of public worship, and all cemeteries, public squares, parks and places, public buildings, town halls, public markets, buildings for the use of the fire departments and military organizations, and the lots and grounds thereto belonging and appertaining, owned or held by any town or incorporated city, or dedicated by such town or city to health, ornament, or public use, or for the use of any fire or military company, now existing, or which may be, under the laws of this Territory hereafter organized.

Eleventh—If the debtor be the head of the family, there shall be a further exemption of a homestead, to be selected by the debtor, consisting of lands, together with the appurtenances and improvements thereon, not exceeding in value one thousand dollars for the judgment debtor, and the further sum of two hundred and fifty dollars for each member of the family. If the homestead selected by the debtor is of a greater value than is exempted under this section, it shall be optional with the judgment debtor to permit the same to be partitioned, or to be sold, and to receive in money the value of the homestead as provided in this section. If the debtor so elect, the homestead may be sold as other lands are sold on execution, and, after paying the debtor the value of the homestead, the balance of the money shall be applied [upon the judgment]: *Provided*, that the homestead shall not be sold if the officer do not receive a bid for a greater amount than the value of the homestead exempted in this section. If sold on the judgment, the money paid the debtor for the homestead shall be exempt from that or any other execution. If the officer having the execution, and the judgment debtor, cannot agree as to the value of the homestead, or the partition thereof or as to the quantity and value of any of the articles of personal property in this section exempted, the officer shall select one person and the debtor another person, both being householders of the vicinity, to whom the officer shall administer an oath, to appraise and set apart the articles of personal property, if upon these they disagree, or if the disagreement relates to the value of the homestead, or to the partition thereof, then to report to the officer, if they can agree, their appraisal of the property selected for the homestead. If the debtor elect to have the property partitioned, it shall be the duty of the appraisers to set apart such a homestead as the judgment debtor shall elect and be entitled to under the provisions of this section. In case of the disagreement of the appraisers, they shall choose a third person, who shall also be sworn; and the decision of any two of said appraisers, when made, shall be final. The property not set apart as a homestead shall be subject to sale under execution, the proceeds to be applied on the judgment.

Twelfth—No article or species of property mentioned in this section shall be exempt from execution issued upon a judgment recovered for its price, or a mechanic's or laborer's lien, or upon a mortgage thereon.

Thirteenth—None of the exemptions herein made are intended for the benefit of non-residents, but their property is liable to execution, with the exception of the ordinary wearing apparel; but any person coming within the Territory, with the intention of remaining, is a resident within the meaning of this act, and nothing herein shall be so construed as to exempt the property of any person or persons about to depart from the Territory with the intention of removing their effects therefrom: *Provided*, that nothing in this act shall be so construed as exempting any real or personal property from sale for taxes. In this section, the word "family" shall be construed to include all persons belonging to the household of the judgment debtor, or dependent upon him for subsistence, but shall not include transient persons, boarders, or hired servants.

Satisfaction of.

(1445.) SEC. 220. The Territorial marshal, or the sheriff of the county, shall execute the writ againt the property of the judgment debtor, by levying on a sufficient amount of unexempted property, if there be sufficient, collecting, or selling the things in action, and selling the other property, and paying to the plaintiff, or his attorneys, so much of the proceeds as will satisfy the judgment, or depositing the amount with the clerk of the court. Any excess in the proceeds over the judgment, and the fees of the officers shall be returned to the judgment debtor. When there is more property of the judgment debtor than is sufficient to satisfy the judgment and the fees of the officer within his view, he shall levy only on such part of the property as the judgment debtor may indicate: *Provided*, that the judgment debtor may indicate at the time of the levy such part: *And provided,* that the property indicated be amply sufficient to satisfy such judgment and fees.

Sale of property;

(1446.) SEC. 221. Before the sale of property on execution, notice thereof shall be given as follows:

First—In case of perishable property, by posting written notice of the time and place of sale in three public places of the precinct, or city where the sale is to take place, for such a time as may be reasonable, considering the character and condition of the property.

Second—In case of other personal property, by posting a similar notice in three public places of the precinct, or city where the sale is to take place, not less than five nor more than ten days.

Third—In case of real property, by posting a similar notice, particularly describing the property, for twenty days, in three public places of the precinct, or city, where the property is situated, and also where the property is to be sold.

Penalty for selling without notice.

(1447.) SEC. 222. An officer selling without the notice prescribed by the last section, shall forfeit a sum not to exceed five hundred dollars, at the discretion of the court, to the aggrieved party, in addition to his actual damages; and a person willfully taking down or defacing the notice posted, if done before the sale or the satisfaction of the judgment (if the judgment be satisfied before sale), shall forfeit to the aggrieved party, a sum not to exceed five hundred dollars, at the discretion of the court.

Sales, how made.

(1448.) SEC. 223. All sales of property under execution, shall be made at auction, to the highest bidder, and shall be made between the hours of nine in the morning, and five in the afternoon. After sufficient property has been sold to satisfy the execution, no more shall be sold. The officer holding the execution shall not become a purchaser, or be interested in any purchase at such sale. When the sale is of personal property, capable of manual delivery, it shall be in view of those who attend the sale, and be sold in such parcels as are likely to bring the highest price; and when the sale is of real property, and consisting of several known lots or parcels, they shall be sold separately, or when a portion of such real property is claimed by a third person, and he requires it to be sold separately, such portion shall be thus sold. All sales of real property shall be made at the court house of the county in which the property, or some part thereof, is situated. The judgment debtor, if present at the sale, may also direct the order in which the property, real or personal, shall be sold. When such property consists of several known lots or parcels, or of articles which can be sold to advantage separately, the officer shall be bound to follow such directions.

Purchaser refusing to pay, property to be resold.

(1449.) SEC. 224. If a purchaser refuse to pay the amount bid by him or [for] property struck off to him at a sale under execution, the officer may again sell the property to the highest bidder, after again giving the notice hereinbefore provided; and if any loss be occasioned thereby from the purchaser refusing to pay his bid, the officer may recover the amount of such loss, with costs, for the benefit of the party aggrieved, by motion, upon previous notice of five days to such purchaser, before any court of competent jurisdiction.

Proceedings to enforce payment of loss of resale.

(1450.) SEC. 225. Such court shall proceed in a summary manner, in the hearing and disposition of such motion, and give judgment, and issue execution therefor forthwith, but the refusing purchaser may claim a jury. And the same proceedings may be had against any subsequent purchaser who shall refuse to pay, and the officer may, in his discretion, thereafter reject the bid of any person so refusing.

Amount for which officer is liable.

(1451.) SEC. 226. The two preceding sections shall not be construed to make the officer liable for any more than the amount bid by the second, or subsequent purchaser, and the amount collected from the purchaser refusing to pay.

Certificate of sale, etc.

(1452.) SEC. 227. When the purchaser of any personal property, capable of manual delivery, shall pay the purchase money, the officer making the sale shall deliver to the purchaser the property, and if desired, shall execute and deliver to him a certificate of the sale and payment. Such certificate shall convey to the purchaser all the right, title and interest which the debtor had in and to such property, on the day the execution was levied.

Same.

(1453.) SEC. 228. When the purchaser of any personal property not capable of manual delivery, shall pay the purchase money, the officer making the sale shall execute and deliver to the purchaser a certificate of sale and payment. Such certificate shall convey to the purchaser all right, title and interest which the debtor had in and to such property on the day the execution was levied.

(1454.) SEC. 229. Upon a sale of real property, the

Sale of real estate, when absolute.

purchaser shall be substituted to and acquire all the right, title, interest and claim of the judgment debtor thereto; and when the estate is less than a leasehold of two years unexpired term, the sale shall be absolute. In all other cases, the real property shall be subject to redemption, as provided in this chapter. The officer shall give to the purchaser a certificate of the sale, containing:

First—A particular description of the real property sold.

Second—The price bid for each distinct lot or parcel.

Third—The whole price paid.

Fourth—When subject to redemption, it shall be so stated; and when the judgment, under which the sale has been made, is made payable in a specified kind of money or currency, the certificate shall also state the kind of money, or currency, in which such redemption may be made, which shall be the same as that specified in the judgment. A duplicate of such certificate shall be filed by the officer in the office of the recorder of the county.

When subject to redemption.

(1455.) SEC. 230. Property sold subject to redemption, as provided in the last section, or any part sold separately, may be redeemed in the manner hereinafter provided by the following persons, or their successors in interest:

First—The judgment debtor, or his successor in interest, in the whole or any part of the property.

Second—A creditor having a lien by judgment, or mortgage, on the property sold, or on some share or part thereof, subsequent to that on which the property was sold. The persons mentioned in the second subdivision of this section are, in this chapter, termed redemptioners.

Redemption, how made.

(1456.) SEC. 231. The judgment debtor, or a redemptioner, may redeem the property from a purchaser within six months after the sale, on paying the purchaser the amount of his purchase, in the kind of money or currency specified in the judgment, if any be specified, with six per cent. thereon in addition, together with the amount of any assessment, or taxes, which the purchaser may have paid thereon after the purchase, and interest on such amount; and if the purchaser be also a creditor, having a lien prior to that of a redemptioner, other than the judgment under which the purchase was made, the amount of such lien, with interest.

Same.

(1457.) SEC. 232. If the property be so redeemed by a redemptioner, either the judgment debtor, or another redemptioner may, within sixty days of the last redemption, again redeem it from the last redemptioner, on paying the sum paid on such last redemption, with three per cent. thereon in addition, and the amount of any assessments, or taxes, which the said last redemptioner may have paid thereon, after the redemption by him, with interest on such amount, and in addition, the amount of any liens held by said last redemptioner prior to his own, with interest: *Provided*, that the judgment under which the property was sold need not be paid as a lien. The property may be again, and as often as the debtor or redemptioner is so disposed, redeemed from any previous redemptioner within sixty days after the last redemption, with three per cent. thereon in addition, and the amount of any assessments, or taxes, which the last previous redemptioner paid after the redemption by him, with interest thereon, and the amount of any liens other than the judgment under which the property was sold, held by the said last redemptioner previous to his own, with interest. Notice of redemption shall be given to the Territorial marshal, or the sheriff of the county. If no redemption be made within six months after the sale, the purchaser, or his assignee, shall be entitled to a conveyance, or if the property be so redeemed whenever sixty days have elapsed, and no other redemption has been made, and notice thereof given, and the time for the redemption shall have expired, the last redemptioner, or his assignee, shall be entitled to a deed from the officer. If the debtor redeem at any time before the time for the redemption expires, the effect of the sale shall be terminated and he be restored to his estate.

(1458.) SEC. 233. The payment mentioned in the last two sections may be made to the purchaser, or redemptioner, as the case may be, or for him to the officer who made the sale; and a tender of the money shall be equivalent to payment so far as to effect a redemption of the property, and all such payments, or tender, shall be made in the kind of money, or currency, in which the last redemption was made, and in which the lien of such redemption was payable. A person desiring to redeem may demand of the purchaser, or last redemptioner, or his attorney in fact, if he be absent from the county, in which the property is situate, a statement in writing of all his claims and liens against the property to be paid on redemption, specifying each item; and if he fail to furnish such statement within three days, then it shall only be necessary to a redemption to pay, or Same.

tender the amount of the bid or the last redemption, as the case may be, with the per centage allowed added thereto.

Same.

(1459.) SEC. 234. A redemptioner shall produce to the officer, or person, from whom he seeks to redeem, and serve with his notice to the officer:

First—A copy of the docket of the judgment under which he claims the right to redeem, certified by the clerk of the court, where the judgment is docketed; or if he redeem upon a mortgage, or other lien, a note of the record thereof certified by the recorder.

Second—A copy of an assignment necessary to establish his claim, verified by the affidavit of himself, or of subscribing witnesses thereto; and:

Third—An affidavit by himself, or his agent, showing the amount then actually due on the lien.

Waste may be restrained.

(1460.) SEC. 235. Until the expiration of the time allowed for redemption, the court may restrain the commission of waste on the property, or may appoint a receiver to take charge of the property, or the proceeds thereof, by order granted with or without notice, on the application of the purchaser, or the judgment creditor. But it shall not be deemed waste for the person in possession of the property at the time of sale, or entitled to possession afterwards, during the period allowed for redemption, to continue to use it in the same manner in which it was previously used; or to use it in the ordinary course of husbandry; or to make the necessary repairs of buildings thereon; or to use wood or timber on the property therefor; or for the repair of fences; or for fuel in his family while he occupies the property.

Rents and profits.

(1461.) SEC. 236. The purchaser from the time of a sale until a redemption, and a redemptioner from the time of his redemption until another redemption, shall be entitled to receive from the tenant in possession, the rents of the property sold, or the value of the use and occupation thereof: *Provided*, that in case the property shall be redeemed as provided in this chapter, the amount of such rents and profits which may have been received by such purchaser, or redemptioner, or which said purchaser, or redemptioner, may have been entitled to claim, or receive, unless such claim shall be released to the person claiming such right of redemption, shall be deducted from the amount which said purchaser, or redemptioner, would be entitled to receive on such redemption.

When purchaser may recover price paid from judgment creditor.

(1462.) SEC. 237. If the purchaser of real property sold on execution, or his successor in interest, or a redemptioner be evicted therefrom in consequence of irregularities in the proceedings concerning the sale, or of the reversal, or discharge of the judgment, he may recover the price paid, with interest, from the judgment creditor. If the purchaser of property, or his successor in interest, fail to recover possession in consequence of irregularity in the proceedings concerning the sale, or because the property sold was not subject to execution and sale, the court having jurisdiction thereof shall, on petition of such party in interest, or his attorney, revive the original judgment for the amount paid by such purchaser at the sale, with interest thereon from the time of payment at the same rate that the original judgment bore, and when so revived, the said judgment shall have the same effect as an original judgment of the said court of that date, and bearing interest as aforesaid, and any other, or after acquired property, rents, issues or profits of the said debtor, shall be liable to levy and sale under execution in satisfaction of such debt: *Provided*, that no property of such debtor *bona fide* sold upon the filing of such petition, shall be subject to the lien of such judgment: *And, provided further*, that notice of the filing of such petition shall be made by filing a notice thereof in the office of the recorder of the county where such property is situated, and that said judgment shall be revived in the name of the original plaintiff, or plaintiffs, for the use of said petitioner, the party in interest.

CHAPTER II.

PROCEEDINGS SUPPLEMENTARY TO THE EXECUTION.

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When judgment debtor may be required to answer.

(1463.) SEC. 238. When an execution against property of the judgment debtor, or of any one of several debtors in the same judgment, issued to the Territorial marshal, or the sheriff of the county, where he resides, or if he do not reside in this Territory, to the Territorial marshal, or the sheriff of the county, where the judgment roll is filed, is returned unsatisfied, in whole or in part, the judgment creditor, at any time after such return is made, shall be entitled to an order from the judge of the court requiring such judgment debtor to appear, and answer upon oath concerning his property, before such judge, or a referee appointed by him, at a time and place specified in the order; but no judgment debtor shall be required to attend before a judge, or referee, out of the county in which he resides, when proceedings are taken under the provisions of this chapter.

Refusal to apply property to satisfaction of judgment.

(1464.) SEC. 239. After the issuing of an execution against property, and upon proof by affidavit of a party, or otherwise, to the satisfaction of the court, or of the judge thereof, that any judgment debtor has property which he unjustly refuses to apply towards the satisfaction of the judgment, such court, or judge, may by an order require the judgment debtor to appear at a specified time and place before such judge, or a referee appointed by him, to answer concerning the same; and such proceedings may thereupon be had for the application of the property of the judgment debtor toward the satisfaction of the judgment, as are provided upon the return of an execution. Instead of the order requiring the attendance of the judgment debtor, the judge may upon affidavit of the judgment creditor, his agent or attorney, if it appear to him that there is danger of the debtor absconding, order the Territorial marshal, or the sheriff of the county, to arrest the debtor and bring him before such judge. Upon being brought before the judge, he may be ordered to enter into an undertaking, with sufficient surety, that he will attend from time to time before the judge or referee, as shall be directed during the pendency of proceedings, and until the final determination thereof, and will not in the meantime dispose of any portion of his property not exempt from execution. In default of entering into such undertaking, he may be committed to prison.

Debtor of judgment debtor may pay.

(1465.) SEC. 240. After the issuing of an execution against property, any person indebted to the judgment debtor may pay to the officer the amount of this debt, or so much thereof as may be necessary to satisfy the execution, and the officer's receipt shall be a sufficient discharge for the amount so paid.

Debtor to appear and answer.

(1466.) SEC. 241. After the issuing, or return of an execution against property of the judgment debtor, or of any one of several debtors in the same judgment, and upon proof by affidavit or otherwise, to the satisfaction of the judge that any person or corporation has property of such judgment debtor, or is indebted to him in an amount exceeding fifty dollars, the judge may, by an order, require such person or corporation, or any officer or member thereof, to appear at a specified time and place before him, or a referee appointed by him, and answer concerning the same.

Creditor of judgment debtor may be ordered to disclose.

(1467.) SEC. 242. Witnesses may be required to appear and testify before the judge, or referee, upon any proceeding under this chapter in the same manner as upon the trial of an issue.

Witnesses.

(1468.) SEC. 243. The judge, or referee, may order any property of the judgment debtor not exempt from execution, in the hands of such debtor, or any other person, or due to the judgment debtor, to be applied toward the satisfaction of the judgment.

Judge may order property to be applied to satisfy judgment.

(1469.) SEC. 244. If it appears that a person, or corporation, alleged to have property of the judgment debtor, or indebted to him, claims an interest in the property adverse to him, or denies the debt, the court or judge may authorize, by an order made to that effect, the judgment creditor to institute an action against such person, or corporation, for the recovery of such interest or debt; and the court or judge

Adverse claim.

may, by order, forbid a transfer, or other disposition of such interest, or debt, until an action can be commenced and prosecuted to judgment. Such order may be modified, or vacated by the judge granting the same, or the court in which the action is brought at any time, upon such terms as may be just.

Penalty for disobedience of order of referee.

(1470.) SEC. 245. If any person, party, or witness, disobey an order of the referee, properly made in the proceedings before him under this chapter, he may be punished by the court, or judge, ordering the reference for a contempt.

TITLE VIII.

ACTIONS IN PARTICULAR CASES.

CHAPTER I. Actions for the foreclosure of mortgages.
CHAPTER II. Actions for nuisance, waste and willful trespass in certain cases on real property.
CHAPTER III. Actions to determine conflicting claims to real property, and other provisions relating to actions concerning real estate.
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CHAPTER I.

ACTIONS FOR THE FORECLOSURE OF MORTGAGES.

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1473. Sales when debt is not due.

Power of court to direct sale of property.

(1471.) SEC. 246. There shall be but one action for the recovery of any debt, or the enforcement of any right secured by mortgage, or lien upon real estate, or personal property, which action shall be in accordance with the provisions in this chapter. In such action judgment shall be rendered for the amount found due the plaintiff, and the court shall have power, by its decree or judgment, to direct a sale of the encumbered property (or such part thereof as may be necessary), and the application of the proceeds of the sale to the payment of the costs and expenses of the sale, the costs of the suit and the amount due to the plaintiff. If it shall appear from the return of the Territorial marshal or the sheriff of the county, that there is a deficiency of such proceeds, and a balance still due to the plaintiff, the judgment shall then be docketed for such balance against the defendant, or defendants, personally liable for the debt, and shall, from the time of such docketing, be a lien upon the real estate of the judgment debtor, and an execution may thereupon be issued by the clerk of the court, in like manner and form as upon other judgments, to collect such balance, or deficiency, from the property of the judgment debtor.

Surplus after sale, how disposed of.

(1472.) SEC. 247. If there be surplus money remaining after payment of the amount due on the mortgage, lien, or incumbrance, with costs, the court may cause the same to be paid to the person entitled to it, and in the meantime may direct it to be deposited in court.

Sales when debt is not due.

(1473.) SEC. 248. If the debt for which the mortgage, lien, or incumbrance is held, be not all due, so soon as sufficient of the property has been sold to pay the amount due, with costs, the sale shall cease, and afterwards, as often as more becomes due for principal or interest, the court may, on motion, order more to be sold. But if the property cannot be sold in portions, without injury to the parties, the whole may be ordered to be sold in the first instance, and the entire debt and costs paid, there being a rebate of interest where such rebate is proper.

CHAPTER II.

ACTIONS FOR NUISANCE, WASTE AND WILLFUL TRESPASS IN CERTAIN CASES, ON REAL PROPERTY.

SECTION.
1474. Nuisance defined; action for; judgment for.
1475. Actions for waste.
1476. Injuring timber, etc., liability for.
SECTION.
1477. Same.
1478. Judgment for forcible and unlawentry, etc.

Nuisance defined, action for.

(1474.) SEC. 249. Anything which is injurious to health, or indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, is a nuisance, and the subject of an action. Such action may be brought by any person whose property is injuriously affected, or whose personal enjoyment is lessened by the nuisance; and by the judgment, the nuisance may be enjoined or abated, as well as damages recovered.

Judgment for.

Actions for waste.

(1475.) SEC. 250. If a guardian, tenant for life or years, joint tenant, or tenant in common of real property, commit waste thereon, any person aggrieved by the waste may bring an action against him therefor, in which action there may be judgment for treble damages.

Injuring timber, etc.

(1476.) SEC. 251. Any person who shall cut down, or carry off, any wood or underwood, tree or timber, or girdle or otherwise injure any tree or timber on the land of another person, or on the street or highway in front of any person's house, village or city lot, or cultivated grounds, or on the commons or public grounds of any city or town, or on the street or highway in front thereof, without lawful authority, shall be liable to the owner of such land, or to such city or town, for treble the amount of damages which may be assessed therefor, in a civil action in any court having jurisdiction.

Liability for.

Same.

(1477.) SEC. 252. Nothing in the last section shall authorize the recovery of more than the just value of the timber taken from uncultivated wood land for the repair of a public highway or bridge upon the land, or adjoining it.

(1478.) SEC. 253. If a person recover damages for a

Judgment for forcible and unlawful entry, etc.

forcible or unlawful entry in or upon, or detention of any building or any uncultivated real property, judgment may be entered for an amount not exceeding three times that at which the actual damages are assessed.

CHAPTER III.

ACTIONS TO DETERMINE CONFLICTING CLAIMS TO REAL PROPERTY, AND OTHER PROVISIONS RELATING TO ACTIONS CONCERNING REAL ESTATE.

SECTION.
1479. Actions by persons in possession of real property.
1480. Costs, when not to be recovered.
1481. Actions, where right has terminated during pendency.
1482. Improvements, value to be allowed.
1483. Court may allow survey to be made.

SECTION.
1484. Order of survey.
1485. Mortgage not to be deemed a conveyance.
1486. Court may enjoin injury.
1487. Damages for injury.
1488. Action for recovery not prejudicial by alienation.

Actions by persons in possession of real property.

(1479.) SEC. 254. An action may be brought by any person in possession, by himself or his tenant, of real property, against any person who claims an estate or interest therein adverse to him, for the purpose of determining such adverse claim, estate or interest.

Costs when not to be recovered.

(1480.) SEC. 255. If the defendant in such action disclaim in his answer any interest or estate in the property, or suffer judgment to be taken against him without answer, the plaintiff shall not recover costs.

Action, where right has terminated during pendency.

(1481.) SEC. 256. In an action for the recovery of real property, where the plaintiff shows a right to recover at the time the action was commenced, but it appears that his right has terminated during the pendency of the action, the verdict and judgments shall be according to the fact, and the plaintiff may recover damages for withholding the property.

Improvements, value to be allowed.

(1482.) SEC. 257. When damages are claimed for withholding the property recovered, upon which permanent improvements have been made by a defendant, or those under whom he claims, holding under the color of title adversely to the claims of the plaintiff, in good faith, the value of such improvements shall be allowed as a set-off against such damages.

Court may allow survey to be made. (1483.) SEC. 258. The court in which an action is pending for the recovery of real property, may, on motion, upon notice by either party, for good cause shown, grant an order allowing such party the right to enter upon the property and make survey and measurement thereof, for the purposes of the action.

Order of survey. (1484.) SEC. 259. The order shall describe the property, a copy thereof shall be served on the owner or occupant, and thereupon such party may enter upon the property with necessary surveyors and assistants, and may make such survey and measurements; but if any unnecessary injury be done to the property he shall be liable therefor.

Mortgage not to be deemed conveyance. (1485.) SEC. 260. A mortgage of real property shall not be deemed a conveyance, whatever its term, so as to enable the owner of the mortgage to recover possession of the real property without a foreclosure and sale.

Court may enjoin injury. (1486.) SEC. 261. The court may, by injunction, on good cause shown, restrain the party in possession from doing any act to the injury of real property during the foreclosure of a mortgage thereon; or after a sale on execution, before a conveyance.

Damages for injury. (1487.) SEC. 262. When real property shall have been sold on execution, the purchaser thereof, or any person who may have succeeded to his interest, may, after his estate becomes absolute, recover damages for injury to the property by the tenant in possession, after sale and before possession is delivered under the conveyance.

Action for recovery not prejudiced by alienation. (1488.) SEC. 263. An action for the recovery of real property against a person in possession cannot be prejudiced by an alienation made by such person, either before or after the commencement of the action.

CHAPTER IV.

ACTIONS FOR THE PARTITION OF REAL PROPERTY.

SECTION.
1489. Action for partition.
1490. Interest of parties to be set forth in complaint.
1491. Lien.
1492. Notice of action.
1493. Summons to parties in interest.
1494. Summons by publication.
1495. Answer, what to set forth.
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1500. Sale of property, when may be ordered.
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1536. Order of court.
1537. Referees to go on claims.
1538. Parties may unite.
1539. Parties' place of location.
1540. Same.
1541. Parties remaining.
1542. Evidence to be returned.

Action for partition.

(1489.) SEC. 264. When several persons hold and are in possession of real property, as joint tenants or as tenants in common in which one or more of them have an estate of inheritance, or for life, or lives, or for years, an action may be brought by one or more of such persons for a partition thereof, according to the respective rights of the persons interested therein, and for a sale of such property, or a part of it, if it appear that a partition cannot be made without great prejudice to the owners.

Interests of parties to be set forth in complaint.

(1490.) SEC. 265. The interests of all persons in the property, whether such persons be known or unknown, shall be set forth in the complaint specifically and particularly, as far as known to the plaintiff; and if one or more of the parties, or the share or quantity of interest of any of the parties be unknown to the plaintiff, or be uncertain, or contingent, or the ownership of the inheritance depend upon an executory devise, or the remainder be a contingent remainder, so that such parties cannot be named, that fact shall be set forth in the complaint.

Lien. (1491.) SEC. 266. No persons who have or claim any liens upon the property, by mortgage, judgment, or otherwise, need be made parties to the action, unless such liens be matters of record.

Notice of action. (1492.) SEC. 267. Immediately after filing the complaint, the plaintiff shall file with the recorder of the county in which the property is situated, a notice of the pendency of the action, containing the names of the parties so far as known, the object of the action, and a description of the property to be affected thereby. From the time of the filing, it shall be deemed notice to all persons.

Summons to parties in interest. (1493.) SEC. 268. The summons shall be directed to all the joint tenants, and tenants in common, and all persons having any interest in, or any liens of record by mortgage, judgment, or otherwise, upon the property, or upon any particular portion thereof; and generally to all persons unknown who have or claim any interest in the property.

Summons by publication. (1494.) SEC. 269. If a party having a share or interest is unknown, or any one of the unknown parties reside out of the Territory, or cannot be found therein, and such fact is made to appear by affidavit, the summons may be served on such absent or unknown party by publication, as in other cases. When publication is made, the summons, as published shall be accompanied by a brief description of the property which is the subject of the action.

Answer, what to set forth. (1495.) SEC. 270. The defendants who have been personally served with the summons, and a certified copy of the complaint, shall set forth in their answers, fully and particularly, the nature and extent of their interest in the property, and if such defendants claim a lien upon the property by mortgage, judgment, or otherwise, they shall state the amount and date of the same, and the amount remaining due thereon, and whether the amount has been secured in any other way or not; and if secured, the extent and nature of the security; or they shall be deemed to have waived their rights to such lien.

(1496.) SEC. 271. The rights of the several parties, plaintiffs as well as defendants, may be put in issue, tried and determined by such action; and when a sale of the premises is necessary, the title shall be ascertained by proof to the satisfaction of the court, before the judgment of sale shall be made; and where service of the complaint has been made by publication, like proof shall be required of the right of the absent or unknown parties, before such judgment is rendered; except that where there are several unknown persons having an interest in the property, their rights may be considered together in the action, and not as between themselves.

Right of parties may be determined.

(1497.) SEC. 272. The plaintiff shall produce to the court, on the hearing of the case, the certificate of the recorder of the county where the property is situated, showing whether there were or not any liens outstanding of record upon the property, or any part thereof, at the time of the commencement of the action.

Certificates as to liens.

(1498.) SEC. 273. If it shall appear to the court, by the certificate of the county recorder, or county clerk, or by the sworn or verified statement of any person who may have examined or searched the records, that there are outstanding liens, or incumbrances of record upon such real property, or any part thereof, which existed and were of record at the time of the commencement of said action, and the persons holding such liens are not made parties to the action, the court shall either order such persons to be made parties to the action, by an amendment or supplemental complaint, or appoint a referee to ascertain whether or not such liens or incumbrances have been paid, or if not paid, what amount remains due thereon, and their order among the liens or incumbrances severally held by the said persons and the parties to said action, and whether the amount remaining due thereon has been secured in any manner, and if secured, the nature and extent of the security.

Persons holding liens to be made parties.

(1499.) SEC. 274. The plaintiff shall cause a notice to be served a reasonable time previous to the day for appearance before the referee appointed, as provided in the last section, on each person having outstanding liens of record who is not a party to the action, to appear before the referee at a specified time and place to make proof, by his own affidavit or otherwise, of the true amount due or to become due, contingently or absolutely, thereon. In case such person be absent, or his residence be unknown, service may be

Notice.

made by publication or notice to his agents, under the direction of the court, in such manner as may be proper. The report of the referee thereon shall be made to the court, and shall be confirmed, modified or set aside and a new reference ordered, as the justice of the case may require.

Sale of property, when may be ordered.

(1500.) SEC. 275. If it be alleged in the complaint, and be established by evidence, or if it appear by the evidence without such allegation in the complaint, to the satisfaction of the court, that the property, or any part of it, is so situated that partition cannot be made without great prejudice to the owners, the court may order a sale thereof. Otherwise, upon the requisite proofs being made, it shall order a partition according to the respective rights of the parties, as ascertained by the court, and appoint three referees therefor; and shall designate the portion to remain undivided for the owners whose interests remain unknown or are not ascertained.

Partition, how made.

(1501.) SEC. 276. In making the partition, the referee shall divide the property and allot the several portions thereof to the respective parties, quality and quantity relatively considered, according to the respective rights of the parties, as determined by the court, designating the several portions by proper landmarks; and may employ a surveyor, with the necessary assistants, to aid them therein.

Report of referees.

(1502.) SEC. 277. The referees shall make a report of their proceedings, specifying therein the manner of executing their trust, describing the property divided, and the shares allotted to each party, with a particular description of each share.

Judgment, effect of.

(1503.) SEC. 278. The court may confirm or set aside the report, and, if necessary, appoint new referees. Upon the report being confirmed, judgment shall be rendered that such partition be effectual forever, which judgment shall be binding and conclusive:

First—On all persons named as parties to the action, and their legal representatives, who have at the time any interest in the property divided, or any part thereof, as owners in fee, or as tenants for life or for years, or as entitled to the reversion, remainder, or the inheritance of such property, or of any part thereof, after the termination of a particular estate therein, and who by any contingency, may be entitled to a beneficial interest in the property, or who have an interest in any undivided share thereof as tenants for years or for life.

Second—On all persons interested in the property who may be unknown, to whom notice shall have been given of the action for partition by publication; and,

Third—On all other persons claiming from such parties or persons, or either of them.

(1504.) SEC. 279. But such judgment and partition shall not affect tenants for years less than ten, to the whole of the property which is the subject of the partition. Same.

(1505.) SEC. 280. The expenses of the referees, including those of a surveyor and his assistant, when employed, shall be ascertained and allowed by the court, and the amount thereof, together with the fees allowed by law to the referees, shall be apportioned among the different parties to the action. Expenses of referees.

(1506.) SEC. 281. When a lien is on an undivided interest or estate of any of the parties, such lien, if a partition be made, shall thenceforth be a charge only on the share assigned to such party, but such share shall be first charged with its just proportion of the costs of the partition, in preference to such lien. Lien on undivided interest.

(1507.) SEC. 282. When a part of the property only is ordered to be sold, if there be an estate for life or years in an undivided share of the whole property, such estate may be set off in any part of the property not ordered to be sold. Estate for life or years, how set off.

(1508.) SEC. 283. The proceeds of the sale of the incumbered property shall be applied, under the direction of the court, as follows: Proceeds of incumbered property, how applied.

First—To pay its just proportion of the general costs of the action.

Second—To pay the costs of the reference.

Third—To satisfy and cancel of record the several liens in their order of priority, by payment of the sums due and to become due; the amount due to be verified by affidavit at the time of payment.

Fourth—The residue among the owners of the property sold, according to their respective shares therein.

(1509.) SEC. 284. Whenever any party to an action who holds a lien upon the property, or any part thereof, has other sureties for the payment of the amount of such lien, the court may, in its discretion, order such securities to be exhausted before a distribution of the proceeds of sale, or may order a just deduction to be made from the amount of the lien on the property on account thereof. When other securities for payment of lien.

Proceeds, how to be distributed.

(1510.) SEC. 285. The proceeds of sale, and the securities taken by the referees, or any part thereof, shall be distributed by them to the persons entitled thereto, whenever the court so directs. But in case no direction be given, all such proceeds and securities shall be paid into court, or deposited therein, or as directed by the court.

Determination of conflicting claims.

(1511.) SEC. 286. When the proceeds of sales of any shares or parcels belonging to persons who are parties to the action, and who are known, are paid into court, the action may be continued as between such parties, for the determination of their respective claims thereto, which shall be ascertained and adjudged by the court. Further testimony may be taken in court, or by a referee at the discretion of the court, and the court may, if necessary, require such parties to present the facts or law in controversy, by pleadings, as in an original action.

Sales, how made.

(1512.) SEC. 287. All sales of real property, made by referees under this chapter, shall be made by public auction to the highest bidder, upon notice published in the manner required for the sale of real property on execution. The notice shall state terms of sale, and if the property, or any part of it, is to be sold subject to a prior estate, charge or lien, that shall be stated in the notice.

Same.

(1513.) SEC. 288. The court shall, in the order for sale, direct the terms of credit which may be allowed for the purchase money of any portion of the premises of which it may direct a sale on credit, and for that portion of which the purchase money is required, by the provisions hereinafter contained, to be invested for the benefit of unknown owners, minors, or parties out of the Territory.

Same.

(1514.) SEC. 289. The referees may take separate mortgages and other securities for the whole or convenient portions of the purchase money, of such parts of the property as are directed by the court to be sold on credit, for the shares of any known owner of full age, in the name of such owner, and for the shares of a minor in the name of the guardian of such minor, and for other shares, in the name of the clerk of the county and his successors in office.

How tenants for life, etc., may receive satisfaction for estates sold.

(1515.) SEC. 290. The person entitled to a tenancy for life or years, whose estate shall have been sold, shall be entitled to receive such sum as may be deemed a reasonable satisfaction for such estate, and which the person so entitled may consent to accept instead thereof, by an instrument in writing, filed with the clerk of the court. Upon the filing of such consent, the clerk shall enter the same in the minutes of the court.

(1516.) SEC. 291. If such consent be not given, filed and entered, as provided in the last section, at or before a judgment of sale is rendered, the court shall ascertain and determine what proportion of the proceeds of the sale, after deducting expenses, will be a just and reasonable sum to be allowed on account of such estate, and shall order the same to be paid to such party, or deposited in the court for him, as the case may require. Same.

(1517.) SEC. 292. If the persons entitled to such estate for life or years be unknown, the court shall provide for the protection of their rights in the same manner, as far as may be, as if they were known and had appeared. Same.

(1518.) SEC. 293. In all cases of sales, when it appears that any person has a vested or contingent future right or estate in any of the property sold, the court shall ascertain and settle the proportional value of such contingent or vested right or estate, and shall direct such proportion of the sale to be invested, secured or paid over, in such manner as to protect the rights and interests of the parties. Contingent future right or estate, how settled.

(1519.) SEC. 294. In all cases of sales of property, the terms shall be made known at the time, and if the premises consist of distinct farms or lots, they shall be sold separately. Terms and mode of sale.

(1520.) SEC. 295. Neither of the referees, nor any person for the benefit of either of them, shall be interested in any purchase; nor shall a guardian of a minor party be interested in the purchase of any real property, being the subject of the action, except for the benefit of the minor. All sales contrary to the provisions of this section shall be void. Certain parties not to be interested in sale.

(1521.) SEC. 296. After completing a sale of the property, or any part thereof ordered to be sold, the referee shall report the same to the court, with a description of the different parcels of land sold to each purchaser; the name of the purchaser; the price paid or accrued; the terms and conditions of the sale; and the securities, if any taken. The report shall be filed in the office of the clerk of the county where the property is situated. Report of sale.

(1522.) SEC. 297. If the sale be confirmed by the court, an order shall be entered directing the referees to execute conveyances and take securities pursuant to such sale; Order to execute conveyance.

which they are hereby authorized to do. Such order may also give directions to them respecting the disposition of the proceeds of the sale.

When party entitled to share purchases.

(1523.) SEC. 298. When a party entitled to a share of the property, or an incumbrancer entitled to have his lien paid out of the sale, becomes a purchaser, the referees may take his receipt for so much of the proceeds of the sale as belongs to him.

Conveyance, where recorded and effect.

(1524.) SEC. 299. The conveyances shall be recorded in the county where the premises are situated, and shall be a bar against all persons interested in the property in any way, who shall have been named as parties in the action, and against all such parties and persons as were unknown, if the summons have been served by publications and against all persons claiming from them or either of them.

Proceeds belonging to unknown owners.

(1525.) SEC. 300. When there are proceeds of a sale belonging to an unknown owner, or to a person without the Territory, who has no legal representative within it, the same shall be invested in securities or interest for the benefit of the persons entitled thereto.

Same.

(1526.) SEC. 301. When the security of the proceeds of the sale is taken, or when an investment of any such proceeds is made, it shall be done, except as herein otherwise provided, in the name of the clerk of the county where the papers are filed, and his successors in office, who shall hold the same for the use and benefit of the parties interested, subject to the order of the court.

Security by referees on sale.

(1527.) SEC. 302. When security is taken by the referees on a sale, and the parties interested in such security, by instrument in writing under their hands delivered to the referees, agree upon the shares and portions to which they are respectively entitled; or when shares and proportions have been previously adjudged by the court, such securities shall be taken in the names of and payable to, the parties respectively entitled thereto; and shall be delivered to such parties upon their receipt therefor. Such agreement and receipt shall be returned and filed with the clerk.

Same.

(1528.) SEC. 303. The clerk in whose name a security is taken, or by whom an investment is made, and his successors in office, shall receive the interest and principal as it becomes due, and apply and invest the same as the court may direct, and shall file in his office all securities taken, and keep an account in a book provided and kept for that purpose in the clerk's office, free for inspection by all persons, of investments and moneys received by him thereon, and the disposition thereof.

(1529.) SEC. 304. When it appears that partition cannot be made equal between the parties according to their respective rights, without prejudice to the rights and interest of some of them, and a partition be ordered by judgment, the court may adjudge compensation to be made by one party to another, on account of the inequality of partition. But such compensation shall not be required to be made to others by owners unknown, nor by minors, unless in case of a minor it appear that he has personal property sufficient for that purpose, and that his interest will be promoted thereby. Compensation when.

(1530.) SEC. 305. When the share of a minor is sold, the proceeds of the sale may be paid, by the referee making the sale, to his general guardian or special guardian appointed for him in the action, upon giving the security required by law or directed by order of the court. Proceeds of sale, minor's share paid to guardian.

(1531.) SEC. 306. The guardian who may be entitled to the custody and management of the estate of an insane person, or other person adjudged incapable of conducting his own affairs, whose interest in real property shall have been sold, may receive, in behalf of such person, his share of the proceeds of such real property, from the referee, on executing, with sufficient sureties, an undertaking approved by the judge of the court, that he will faithfully discharge the trust reposed in him, and will render a true and just account to the person entitled, or to his legal representative. Insane person

(1532.) SEC. 307. The general guardian of a minor, and the guardian entitled to the custody and management of the estate of an insane person, or other person adjudged incapable of conducting his own affairs, who is interested in real estate held in joint tenancy, or in common, or in any other manner so as to authorize his being made a party to an action for the partition thereof, may consent to a partition without action, and agree upon the share to be set off to such minor, or other person entitled, and may execute a release in his behalf to the owners of the shares of the parts to which they may be respectively entitled, upon an order of the court. Partition may be consented to by guardian.

(1533.) SEC. 308. The costs of partition, including fees of referees and other disbursements, shall be paid by the parties respectively entitled to share in the lands divided, in proportion to their respective interests therein, and may Costs of partition.

be included and specified in the judgment. In that case they shall be a lien on the several shares, and the judgment may be enforced by execution against such shares, and against other property held by the respective parties. When, however, a litigation arises between some of the parties only, the court may require the expenses of such litigation to be paid by the parties thereto, or any of them.

Single referee may be appointed.

(1534.) SEC. 309. The court, with the consent of the parties, may appoint a single referee, instead of three referees, in the proceedings under the provisions of this chapter, and the single referee, when thus appointed, shall have all the powers and perform all the duties required of the three referees.

Mining claim, partition of.

(1535.) SEC. 310. When the action is for partition of a mining claim among the tenants in common, joint tenants, co-partners or parceners thereof, the court, upon good cause shown by any party or parties in interest, may, instead of ordering partition to be made in manner as hereinbefore provided, or a sale of the premises for cash, direct the referees to divide the claim in the manner hereinafter specified.

Order of court.

(1536.) SEC. 311. The court shall, in his order, or by his subsequent order made upon motion, fix the time for division of the claim by the referees, which shall not be less than twenty nor more than forty days from the day of the making the order, except by consent of all the parties in interest who have appeared in the action.

Referees to go on claims.

(1537.) SEC. 312. On the day designated in the order, the referees shall go upon the claim to be divided, and proceed to make division of the same as hereinafter provided, and shall continue from day to day until the whole business is completed.

Parties may unite.

(1538.) SEC. 313. Two or more of the tenants in common, joint tenants, co-partners or parceners may unite together for the purposes of such division of which they shall give the referees written notice before they commence the business of division; and all who do not unite as aforesaid, or give notice of separate action, shall, for the purposes of division, be deemed and held to have united. The referees in their action shall recognize those named in the order of the court, or their agents and attorneys in fact, duly appointed by instrument in writing under seal, and acknowledged as in cases of conveyances of real estate, the guardian of a minor, and the guardian entitled to the custody and management of the estate of an insane person, or other person adjudged incapable of conducting his own affairs, and as to the interest of each, shall be controlled entirely by the order of the court.

(1539.) SEC. 314. At the time and place of division, one of the referees to be selected by them, shall, in the manner of public auction, offer to the party or parties who will take the least part or portion of said mining claim in proportion to the interest he or they may have therein, the privilege of first selecting the place at which his portion shall be located, and upon closing the bids the referees shall proceed to measure and mark off, by distinct metes and bounds, to the lowest bidder, his or their portion of said mining claim, at the place designated by them or him, according to the terms of his or their bid. Parties to select place of location.

(1540.) SEC. 315. When the referees have marked off and set apart the interest of the lowest bidder, as provided in the last section, they shall offer to the remaining parties the privilege of selection, as in said section mentioned and described, and shall, upon closing the bids, proceed in the same manner to locate and mark off the portion of the lowest bidder, and shall thereafter continue in the same manner to receive bids and mark off the interest of the bidder or bidders until there shall remain but one party in interest, or parties united, forming one interest, as provided in section three hundred and thirteen. Same.

(1541.) SEC. 316. The party or parties remaining, as provided in the last section, shall become the owner or owners, as the case may be, of the entire claim not marked off and set apart to other parties as hereinbefore provided, in proportion to their respective interests in the claim. Parties remaining.

(1542.) SEC. 317. The referees shall return, with their report in this act required to be made by them, the evidences of authority presented to them by persons other than the parties mentioned in the order of the court, by which they claim the right to bid, or otherwise act, during the proceedings hereinbefore mentioned. Evidence to be returned.

CHAPTER V.

ACTIONS FOR THE USURPATION OF AN OFFICE OR FRANCHISE.

SECTION.
1543. Actions for usurpation of office, etc.
1544. Complaint, what to state; defendant may be arrested.
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1546. When person may take office.

SECTION.
1547. Damages recoverable.
1548. Rights of several may be tried in one action.
1549. Judgment, when defendant has intruded into office.

Actions for usurpation of office, etc.

(1543.) SEC. 318. An action may be brought by the attorney general in the name of the people of this Territory upon his own information, or on the complaint of a private party, against any person who usurps, intrudes into, holds or exercises any office, or franchise, real or pretended, within this Territory, without authority of law. And it shall be the duty of the attorney general to bring the action whenever he has reason to believe that any such office or franchise has been usurped, intruded into, held or exercised by any person, without authority of law.

Complaint, what to state.

(1544.) SEC. 319. Whenever such action is brought, the attorney general in addition to the statement of the cause of action, may also set forth in the complaint the name of the person rightly entitled to the office, with a statement of his right thereto; and in such case, upon proof by affidavit that the defendant has received fees or emoluments belonging to the office, and by means of usurpation thereof, an order may be granted by the judge, or court wherein the case is pending, for the arrest of such defendant, and holding him to bail; and thereupon he may be arrested and held to bail, in the same manner and with the same effect, and subject to the same rights and liabilities as in other civil actions where the defendant is subject to arrest.

Defendant may be arrested.

Judgment, how rendered.

(1545.) SEC. 320. In every such case judgment may be rendered upon the right of the defendant, and also upon the right of the party so alleged to be entitled; or only upon the right of the defendant, as justice shall require.

When person may take office.

(1546.) SEC. 321. If the judgment be rendered upon the right of the person so alleged to be entitled, and the same be in favor of such person, he shall be entitled, after taking the oath of office and executing such official bond as may be required by law, to take upon himself the execution of the office.

Damages recoverable.

(1547.) SEC. 322. If judgment be rendered upon the right of the person so alleged to be entitled, in favor of such person, he may recover, by action, the damages which he shall have sustained by reason of the usurpation of the office by the defendant.

Rights of several may be tried in one action.

(1548.) SEC. 323. When several persons claim to be entitled to the same office or franchise, one action may be brought against all such persons, in order to try their respective rights to such office or franchise.

Judgment, when defendant has intruded into office.

(1549.) SEC. 324. When a defendant, against whom such action has been brought, is adjudged guilty of usurping, or intruding into, or unlawfully holding any office, franchise or privilege, judgment shall be rendered that such defendant be excluded from the office, franchise or privilege, and that he pay the costs of the action. The court may, also, in its discretion, impose upon the defendant a fine not exceeding five thousand dollars, which fine, when collected, shall be paid into the treasury of the Territory.

TITLE IX.

OF APPEALS IN CIVIL ACTIONS.

CHAPTER I.

APPEALS IN GENERAL.

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1550. Judgment, how reviewed.
1551. Order, how may be vacated.
1552. Parties designated.
1553. In what cases an appeal may be taken.
1554. How made.
1555. Statement on appeal.
1556. Waiver of.
1557. Time may be enlarged.
1558. How certified.
1559. Copy to be annexed.
1560. Certain sections not to apply to appeals from order.
1561. Review of appeals from judgment.
1562. Same.
1563. Duty of appellant.
1564. Undertaking.
SECTION.
1565. Stay of execution of judgment, etc., etc.
1566. Assignment or delivery of documents.
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1569. Appeal perfected to stay proceedings below.
1570. Undertaking may be one or several.
1571. Affidavit of sureties.
1572. Appeal perfected to stay proceedings, when.
1573. Hearing, etc.
1574. Judgment on appeal.
1575. Execution for costs.

Judgment, how reviewed.

(1550.) SEC. 325. A judgment or order in a civil action, except when expressly made final by this act, may be reviewed as prescribed by this title, and not otherwise.

Order, how may be vacated.

(1551.) SEC. 326. An order made out of court, without notice to the adverse party, may be vacated or modified without notice, by the judge who made it, or may be vacated or modified on notice, in the manner in which other motions are made.

Parties designated.

(1552.) SEC. 327. Any party aggrieved may appeal in the cases prescribed in this title. The party appealing shall be known as the appellant, and the adverse party as the respondent.

In what cases an appeal may be taken.

(1553.) SEC. 328. An appeal may be taken:

First—From a final judgment in an action or special proceeding commenced in the court in which the judgment is rendered, within one year after the rendition of judgment.

Second—From a judgment rendered on an appeal from an inferior court, within ninety days after the rendition of the judgment.

Third—From an order granting or refusing a new trial, from an order granting or dissolving an injunction, from an order refusing to grant or dissolve an injunction, and from any special order made after the final judgment, within sixty days after the order is made and entered in the minutes of the court.

Fourth—From an interlocutory judgment or order in cases of partition which determines the right of the several parties, and directs partition, sale or division to be made, within sixty days after the rendition of the same.

How made.

(1554.) SEC. 329. The appeal shall be made by filing with the clerk of the court with whom the judgment or order appealed from is entered, a notice stating the appeal from the same, or some specific part thereof, and serving a copy of the notice upon the adverse party or his attorney.

Statement on appeals.

(1555.) SEC. 330. When the party who has the right to appeal wishes a statement of the case to be annexed to the record of the judgment or order, he shall, within twenty days after the entry of such judgment or order, prepare such statement which shall state specifically the particular errors or grounds upon which he intends to rely on the appeal, and shall contain so much of the evidence as may be necessary to explain the particular errors or grounds specified and no more, and shall file the same with the clerk, and serve a copy thereof upon the adverse party. The respondent may, within five days thereafter, prepare and file amendments to the statement, and shall serve a copy thereof on the appellant; the statement and amendments shall be presented to the judge or referee who tried or heard the case, upon notice of two days to the respondent, and a true statement shall thereupon be settled by such judge or referee. If no amendments are filed, the statement may be presented to the judge or referee for settlement without any notice to the respondent.

Waiver of.

(1556.) SEC. 331. If the party shall omit to make a statement within the time limited, he shall be deemed to have waived his right thereto; and when a statement is made and the parties shall omit within the several times above limited, the one party to propose amendments, the other to notify an appearance before the judge or referee, they shall respectively be deemed, the former to have agreed to the statement as prepared, and the latter to have agreed to the amendments as proposed; but the judge or referee, who tried or heard the case, shall, notwithstanding such omission or implied agreement, have power to correct any misstatement of his rulings which such statement may contain.

Time may be enlarged.

(1557.) SEC. 332. The several periods of time above limited may be enlarged, upon good cause shown, by the judge before whom the cause was tried.

How certified.

(1558.) SEC. 333. The statement, when settled by the judge or referee, shall be signed by him, with his certificate that the same has been allowed and is correct. When the statement is agreed upon by the parties, they or their attorneys shall sign the same, with their certificate that it has been agreed upon by them and is correct. In either case, when settled or agreed upon, it shall be filed with the clerk.

Copy to be annexed.

(1559.) SEC. 334. A copy of the statement shall be annexed to a copy of the judgment roll, if the appeal be from a judgment; if the appeal be from an order, to a copy of such order.

Certain sections not to apply to appeals from order.

(1560.) SEC. 335. The provisions of the last five preceding sections shall not apply to appeals taken from an order made upon affidavit filed, but such affidavit shall be annexed to the order, in the place of the statement mentioned in those sections.

Review of appeals from judgment.

(1561.) SEC. 336. Upon an appeal from a judgment, the court may review any intermediate order involving the merits and necessarily affecting the judgment.

Same.

(1562.) SEC. 337. Upon an appeal from a judgment or order, the appellate court may reverse, affirm or modify the judgment or order appealed from, in the respect mentioned in the notice of appeal, and as to any or all of the parties; and may set aside, or confirm, or modify, any or all of the proceedings subject to or dependent upon such judgment or order, and may, if necessary or proper, order a new trial. When the judgment or order is reversed or modified, the appellate court may make complete restitution of all property and rights lost by the erroneous judgment or order, and when it appears to the appellate court that the appeal was made for delay, it may add to the costs such damages as may be just, not exceeding ten per cent.

Duty of appellant.

(1563.) SEC. 338. On an appeal from a final judgment, the appellant shall furnish the court with a transcript of the notice of appeal, and the statement, if there be one, certified by the respective attorneys of the parties to the appeal, or by the clerk of the court. On an appeal from a judgment rendered on an appeal or from an order, the appellant shall furnish the court with a copy of the notice of appeal, the judgment or order appealed from, and a copy of the papers used on the hearing of the court below, such copies to be certified in like manner to be correct. If any written opinion be placed on file in rendering judgment or making the order in the court below, a copy shall be furnished, certified in like manner. If the appellant fail to furnish the requisite papers, the appeal may be dismissed.

Undertaking.

(1564.) SEC. 339. To render an appeal effectual for any purpose, in any case, a written undertaking shall be executed on the part of the appellant, by at least two sureties, to the effect that the appellant will pay all damages and costs which may be awarded against him on the appeal; [or] a sum not exceeding one hundred dollars shall be deposited with the clerk with whom the judgment or order was entered, to abide the event of the appeal. Such undertaking shall be filed, or such deposit made with the clerk, within five days after the notice of appeal is filed.

Stay of execution of judgment, etc., etc.

(1565.) SEC. 340. If the appeal be from a judgment or order directing the payment of money, it shall not stay the execution of the judgment or order, unless a written undertaking be executed on the part of the appellant by two or more sureties, stating their places of residence and occupation, to the effect that they are bound in double the amount named in the judgment or order; that if the judgment or order appealed from, or any part thereof be affirmed, the appellant shall pay the amount directed to be paid by the judgment or order, or the part of such amount as to which the judgment or order shall be affirmed, if affirmed only in part, and all damages and costs which shall be awarded against the appellant upon the appeal. When the judgment or order appealed from is made payable in a specified kind of money or currency, the undertaking required by this section shall be drawn and made payable in the same kind of money or currency specified in such judgment or order.

Assignment or delivery of documents.

(1566.) SEC. 341. If the judgment or order appealed from, direct the assignment or delivery of documents, or personal property, the execution of the judgment or order shall not be stayed by appeal, unless the things required to be assigned or delivered be placed in the custody of such officer or receiver as the court may appoint, or unless an undertaking be entered into on the part of the appellant, with at least two sureties, and in such amount as the court or the judge thereof may direct, to the effect that the appellant will obey the order of the appellate court upon the appeal.

Execution of conveyance, etc.

(1567.) SEC. 342. If the judgment or order appealed from, direct the execution of a conveyance or other instrument, the execution of the judgment or order shall not be stayed by the appeal until the instrument is executed and deposited with the clerk with whom the judgment or order is entered, to abide the judgment of the appellate court.

Sale or delivery of property, etc.

(1568.) SEC. 343. If the judgment or order appealed from, direct the sale or delivery of possession of real property, the execution of the same shall not be stayed unless a written undertaking be executed on the part of the appellant, with two or more sureties, to the effect, that during the possession of such property by the appellant, he will not commit, nor suffer to be committed, any waste thereon, and that if the judgment be affirmed, he will pay the value of the use and occupation of the property from the time of the appeal until the delivery of possession thereof, pursuant to the judgment or order, not exceeding a sum to be fixed by the judge of the court by which the judgment was rendered or order made, and which shall be specified in the undertaking. When the judgment is for the sale of mortgaged premises, and the payment for a deficiency arising upon the sale, the undertaking shall also provide for the payment of such deficiency. In all other cases, not hereinbefore mentioned, the amount of the undertaking to stay the execution of the judgment or order shall be fixed by the court or the judge thereof.

Appeal perfected to stay proceedings below.

(1569.) SEC. 344. Whenever an appeal is perfected, as provided by the preceding sections in this chapter, it shall stay all further proceedings in the court below, upon the judgment or order appealed from, or upon matter embraced therein; but the court below may proceed upon any other matter included in the action and not affected by the judgment or order appealed from. And the court below may, in its discretion, dispense with or limit the security required by said sections, when the appellant is an executor, administrator, trustee, or other person acting in another's right.

(1570.) SEC. 345. The undertaking prescribed by sections three hundred and thirty-eight, three hundred and thirty-nine, three hundred and forty, three hundred and forty-one and three hundred and forty-three, may be in one instrument or several, at the option of the appellant. **Undertaking may be one or several.**

(1571.) SEC. 346. An undertaking upon an appeal shall be of no effect unless it be accompanied by the affidavit of the sureties that they are each worth, the amount specified therein, over and above all their just debts and liabilities, exclusive of the property exempt from execution, except where the judgment exceeds three thousand dollars and the undertaking on appeal is executed by more than two sureties, they may state on their affidavit that they are severally worth amounts less than that expressed in the undertaking, if the whole amount be equivalent to that of two sufficient sureties. The adverse party may, however, except to the sufficiency of the sureties within five days after the filing of the undertaking, and unless they, or other sureties, justify before the judge of the court below, or clerk, within five days thereafter, upon notice to the adverse party, to the amounts stated in their affidavits, the appeal shall be regarded as if no such undertaking had been given; and in all cases where an undertaking is required on appeal by the provision of this chapter, a deposit in the court below of the amount of the judgment appealed from, and one hundred dollars in addition, shall be equivalent to filing the undertaking, and in all cases the undertaking or deposit may be waived by the written consent of the respondent. **Affidavit of sureties, etc.**

(1572.) SEC. 347. In cases not provided for in sections three hundred and thirty-nine, three hundred and forty, three hundred and forty-one and three hundred and forty-three, the perfecting of an appeal by giving the undertaking, and the justification of the sureties thereon, if required, or making the deposit mentioned in section three hundred and thirty-nine shall stay proceedings in the court below upon the judgment or order appealed from, except that where it directs the sale of perishable property the court below may order the property to be sold, and the proceeds thereof to be deposited to abide the judgment of the appellate court. **Appeal perfected to stay proceedings, when.**

(1573.) SEC. 348. Appeals may be brought to a hearing by either party upon a notice of three days to the opposite party. Before the argument each party shall furnish to the other, and to each of the justices, a copy of his points and authorities, or either party may file one copy thereof with **Hearing, etc.**

the clerk, who shall cause the requisite copies to be made.

Judgment on appeal.

(1574.) SEC. 349. When judgment is rendered upon the appeal, it shall be certified by the clerk of the supreme court to the clerk with whom the judgment roll is filed or the order appealed from is entered. In cases of appeal from the judgment, the clerk with whom the roll is filed, shall attach the certificate to the judgment roll, and enter a minute of the judgment of the supreme court on the docket against the original entry. In case of appeal from an order, the clerk shall enter at length in the records of the court the certificate received, and minute against the entry of the order appealed from a reference to the certificate, with a brief statement that the order has been affirmed, reversed or modified, as the case may be, by the supreme court, on appeal.

Execution for costs.

(1575.) SEC. 350. Whenever costs are awarded to a party by an appellate court, such party may have an execution for the same on filing a remittitur with the clerk of the court below, and it shall be the duty of such clerk, whenever the remittitur is filed, to issue the execution upon application therefor, and whenever costs are awarded to a party by an order of any court, such party may have an execution therefor in like manner as upon a judgment.

TITLE X.

MISCELLANEOUS PROCEEDINGS.

CHAPTER I. Proceedings against joint debtors.
CHAPTER II. Confession of judgment without action.
CHAPTER III. Submitting a controversy without action.
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CHAPTER I.

PROCEEDINGS AGAINST JOINT DEBTORS.

SECTION.
1576. How those not served may be bound by judgment.
1577. Summons to show cause.
1578. Same.
1579. Answer and defense.
1580. Where defendant denies liability.
1581. Issues formed, how tried.

(1576.) SEC. 351. When a judgment is recovered against one or more of several persons jointly indebted upon an obligation, by proceeding as provided in section thirty-two, those who were not originally served with the summons and did not appear to the action, may be summoned to show cause why they should not be bound by the judgment in the same manner as though they had been originally served with the summons. How those not served may be bound by judgment.

(1577.) SEC. 352. The summons, as provided in the last section, shall describe the judgment and require the person summoned to show cause why he should not be bound by it, and shall be served in the same manner and returnable within the same time as the original summons. It shall not be necessary to file a new complaint. Summons to show cause.

(1578.) SEC. 353. The summons shall be accompanied by an affidavit of the plaintiff, his agent, representative or attorney, that the judgment, or some part thereof, remains unsatisfied, and shall specify the amount due thereon. Same.

(1579.) SEC. 354. Upon such summons, the defendant may answer within the time specified therein, denying the Answer and defense.

judgment, or setting up any defense which may have arisen subsequently, or he may deny his liability on the obligation upon which the judgment was recovered.

Where defendant denies liability.

(1580.) SEC. 355. If the defendant, in his answer, deny the judgment, or set up any defense which may have arisen subsequently, the summons, with the affidavit annexed, and the answer, shall constitute the written allegations in the case. If he deny his liability on the obligation upon which the judgment was recovered, a copy of the original complaint and the summons, with the affidavit annexed, and the answer, shall constitute such written allegations.

Issues formed, how tried.

(1581.) SEC. 356. The issues formed may be tried as in other cases, but when the defendant denies, in his answer, any liability on the obligation upon which the judgment was rendered, if a verdict be found against him, it shall be for the amount remaining unsatisfied on such original judgment, with interest thereon.

CHAPTER II.

CONFESSION OF JUDGMENT WITHOUT ACTION.

SECTION.
1582. Judgment by confession, how entered.
SECTION.
1583. Statement in writing to be made.
1584. Filed with clerk of court.

Judgment by confession, how entered.

(1582.) SEC. 357. A judgment by confession may be entered without action, either for money due or to become due, or to secure any person against contingent liability on behalf of the defendant, or both, in the manner prescribed by this chapter.

Statement in writing to be made.

(1583.) SEC. 358. A statement in writing shall be made, signed by the defendant and verified by his oath, to the following effect: First—It shall authorize the entry of judgment for a specified sum. Second—If it be money due, or to become due, it shall state concisely the facts out of which it arose, and shall show that the sum confessed therefor is justly due, or to become due. Third—If it be for the purpose of securing the plaintiff against a contingent liability, it shall state concisely the facts constituting the liability, and shall show that the sum confessed therefor does not exceed the same.

(1584.) SEC. 359. The statement shall be filed with the clerk of the court in which the judgment is to be entered, who shall endorse upon it, and enter in the judgment book, a judgment of such court for the amount confessed, with five dollars costs. The judgment and affidavit, with the judgment endorsed, shall thereupon become the judgment roll.

Filed with clerk of court.

CHAPTER III.

SUBMITTING A CONTROVERSY WITHOUT ACTION.

SECTION.
1585. Submission of controversy without action.

SECTION.
1586. Judgment, how entered.
1587. How enforced.

(1585.) SEC. 360. Parties to a question in difference, which might be the subject of a civil action, may, without action, agree upon a case containing the facts upon which the controversy depends, and present a submission of the same to any court which should have jurisdiction if an action had been brought. But it must appear, by affidavit, that the controversy is real, and the proceedings in good faith, to determine the rights of the parties. The court shall thereupon hear and determine the case, and render judgment thereon, as if an action were pending.

Submission of controversy without action.

(1586.) SEC. 361. Judgment shall be entered in the judgment book, as in other cases, but without costs for any proceeding prior to the trial. The case, the submission, and a copy of the judgment shall constitute the judgment roll.

Judgment, how entered.

(1587.) SEC. 362. The judgment may be enforced in the same manner as if it had been rendered in an action, and shall be in the same manner subject to appeal.

How enforced

CHAPTER IV.

ON ARBITRATIONS.

SECTION.
1588. Arbitration, submission to.
1589. How made.
1590. Same; revocation.
1591. Powers of arbitrators.
1592. Proceedings of.
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SECTION.
1594. On what grounds vacated.
1595. On what grounds modified.
1596. Appeal.
1597. Submission revoked. Amount recoverable.

Arbitration, submission to.

(1588.) SEC. 363. Persons capable of contracting, may submit to arbitration any controversy which might be the subject of a civil action between them, except a question of title to real property in fee or for life. This qualification shall not include questions relating merely to the partition or boundaries of real property.

How made.

(1589.) SEC. 364. The submission to arbitration shall be in writing, and may be to one or more persons.

Same, revocation of.

(1590.) SEC. 365. It may be stipulated in the submission that it be entered as an order of the court, for which purpose it shall be filed with the clerk of the court where the parties, or one of them, reside. The clerk shall thereupon enter in his register of actions a note of the submission, with the names of the parties, the names of the arbitrators, the date of the submission, when filed, and the time limited by the submission, if any, within which the award shall be made. When so entered, the submission shall not be revoked without the consent of both parties. The arbitrators may be compelled by the court to make an award, and the award may be enforced by the court in the same manner as a judgment. If the submission be not made an order of the court, it may be revoked at any time before the award is made.

Powers of arbitrators.

(1591.) SEC. 366. Arbitrators shall have power to appoint a time and place for hearing, to adjourn from time to time, to administer oaths to witnesses, to hear the allegations and evidence of the parties, and to make an award thereon.

Proceedings of.

(1592.) SEC. 367. All the arbitrators shall meet and act together during the investigation, but when met, a majority may determine any question. Before acting, they shall be sworn before an officer authorized to administer oaths, faithfully and fairly to hear and examine the allegations and evidence of the parties in relation to the matters in controversy., and to make a just award according to their understanding.

Award, how made; effect of.

(1593.) SEC. 368. The award shall be in writing, signed by the arbitrators, or a majority of them, and delivered to the parties. When the submission is made an order of the court, the award shall be filed with the clerk, and a note thereof, made in his register. After the expiration of five days from the filing of the award, upon the application of a party, and on filing an affidavit showing that notice of filing the award has been served on the adverse party or his attorney, at least four days prior to such application, and that no order staying the entry of judgment has been served, the award shall be entered by the clerk in the judgment book, and shall thereupon have the effect of a judgment.

On what grounds vacated.

(1594.) SEC. 369. The court, on motion, may vacate the award upon any of the following grounds, and may order a new hearing, before the same arbitrators, or others, in its discretion:

First—That it was procured by corruption or fraud.

Second—That the arbitrators were guilty of misconduct or committed gross error in refusing, on cause shown, to postpone the hearing, or in refusing to hear pertinent evidence, or otherwise acted improperly, in a manner by which the rights of the party were prejudiced.

Third—That the arbitrators exceeded their powers in making their award; or that they refused, or improperly omitted to consider a part of the matters submitted to them; or that the award is indefinite, or cannot be performed.

On what grounds modified.

(1595.) SEC. 370. The court may, on motion, modify or correct the award where it appears:

First—That there was a miscalculation in figures upon which it was made, or that there is a mistake in the description of some person or property therein.

Second—When a part of the award is upon matters not submitted, which part can be separated from other parts, and does not affect the decision on the matter submitted.

Third—When the award, though imperfect in form, could have been amended if it had been a verdict, or the imperfection disregarded.

Appeal.

(1596.) SEC. 371. The decision upon a motion shall be subject to appeal in the same manner as an order which is subject to appeal in a civil action; but the judgment entered before a motion is made shall not be subject to appeal.

Submission revoked, amount recoverable.

(1597.) SEC. 372. If a submission to arbitration be revoked, and action be brought therefor, the amount to be recovered shall only be the costs and damages sustained in preparing for and attending the arbitration.

CHAPTER V.

OFFER OF THE DEFENDANT TO COMPROMISE THE WHOLE OR A PART OF AN ACTION.

SECTION 1598. Offer of compromise not to prejudice.

Offer to compromise, not to prejudice.

(1598.) SEC. 373. The defendant may, at any time before the trial or judgment, serve upon the plaintiff an offer to allow judgment to be taken against him for the sum, or property, or to the effect therein specified. If the plaintiff accept the offer, and give notice thereof within five days, he may file the summons, complaint and offer, with an affidavit of notice of acceptance, and the clerk shall thereupon enter judgment accordingly. If the notice of acceptance be not given, the offer shall be deemed withdrawn, and shall not be given in evidence; and if the plaintiff fail to obtain a more favorable judgment, he shall not recover costs, but shall pay the defendant's costs from the time of the offer.

TITLE XI.

OF WITNESSES, AND OF THE MANNER OF OBTAINING EVIDENCE.

CHAPTER I. Of witnesses.
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CHAPTER III. Of affidavits.
CHAPTER IV. Of depositions taken in this Territory.
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CHAPTER VI. Of proceedings to perpetuate testimony.
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CHAPTER I.

OF WITNESSES.

SECTION.
1599. Witnesses, who may be.
1600. Who not disqualified.
1601. Refusal to testify.
1602. Who shall not testify, etc.
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SECTION.
1605. Same.
1606. Same.
1607. Same.
1608. Same.
1609. Judge or juror may be witness.
1610. Interpreters.

Witnesses, who may be.

(1599.) SEC. 374. All persons, without exception, otherwise than as specified in this chapter, may be witnesses in any action or proceeding. Facts which, by the common law, would cause the exclusion of witnesses may still be shown for the purpose of affecting their credibility.

Who not disqualified.

(1600.) SEC. 375. No person shall be disqualified as a witness in any action or proceeding on account of his opinions on matters of religious belief, or by reason of his interest in the event of the action or proceeding as a party thereto or otherwise; but the party or parties thereto, and the person in whose behalf such action or proceeding may be brought or defended, shall, except as hereinafter excepted, be competent and be compellable to give evidence, either *viva voce* or by deposition, or upon a commission, in the same manner and subject to the same rules of examination as other witnesses, on behalf of himself; or either or any of the parties to the action or proceeding.

Refusal to testify.

(1601.) SEC. 376. If a party refuse to attend and testify at the trial, or to give his deposition before trial, or upon a commission when required, his complaint, answer, or reply may be stricken out and judgment be taken against him; and he may be also, in the discretion of the court, proceeded against, as in other cases, for a contempt.

Who shall not testify, etc.

(1602.) SEC. 377. No person shall be allowed to testify under the provisions of section three hundred and seventy-five, when the other party to the transaction, or opposite party in the action, or the party for whose immediate benefit the action or proceeding is prosecuted or defended, is the representative of a deceased person, when the facts to be proved transpired before the death of such deceased person, and nothing contained in said section shall affect the laws in relation to attestation of any instrument required to be attested.

Who shall not be witnesses.

(1603.) SEC. 378. Persons against whom judgment has been rendered upon a conviction for felony, unless pardoned by the governor, or such judgment has been reversed on appeal, shall not be witnesses.

Same.

(1604.) SEC. 379. A husband shall not be a witness for, or against, his wife, nor a wife a witness for, or against, her husband; nor can either, during the marriage or afterwards, be, without the consent of the other, examined as to any communication made by one to the other during the marriage. But this exception shall not apply to an action or proceeding by one against the other.

Same.

(1605.) SEC. 380. An attorney or counselor shall not, without the consent of his client, be examined as a witness as to any communication made by the client to him, or his advice given thereon, in the course of professional employment.

Same.

(1606.) SEC. 381. A clergyman or priest shall not, without the consent of the person making the confession, be examined as a witness as to any confession made to him in his professional character, in the course of discipline enjoined by the church to which he belongs.

Same.

(1607.) SEC. 382. A licensed physician or surgeon shall not, without the consent of his patient, be examined as a witness as to any information acquired in attending the patient, which was necessary to enable him to prescribe or act for the patient: *Provided,* however, in any suit or prosecution against a physician or surgeon for malpractice, if the patient or party suing or prosecuting shall require or give such consent, and any such witness shall give testimony, then such physician or surgeon, defendant, may call any other physicians or surgeons as witnesses on behalf of defendant, without the consent of such patient or party suing or prosecuting.

(1608.) SEC. 383. A public officer shall not be examined as a witness as to communications made to him in official confidence, when the public interest would suffer by the disclosure. Same.

(1609.) SEC. 384. The judge himself, or any juror, may be called as a witness by either party, but in such case it shall be in the discretion of the court, or judge, to order the trial to be postponed, or suspended, and to take place before another judge or jury. Judge or juror may be witnesses.

(1610.) SEC. 385. When a witness does not speak or understand the English language, an interpreter shall be sworn to interpret for him. Any person resident of the county may be summoned by any judge or court to appear before such judge or court to act as interpreter in any action or proceeding. The summons shall be served and returned in like manner as a *subpœna*. Any person so summoned shall, for a failure to attend at the time and place named in the summons, be liable to punishment for contempt. Interpreters.

CHAPTER II.

MANNER OF COMPELLING THE ATTENDANCE OF WITNESSES, AND THEIR RIGHTS AND DUTIES.

SECTION.
1611. Attendance of witnesses. What subpœna may require. Proviso.
1612. Subpœna, how issued.
1613. How served.
1614. Same.
1615. Person present required to testify, etc.
1616. Duty of witness.
1617. Questions witness must answer.
SECTION.
1618. Disobedience to subpœna.
1619. Same.
1620. Failure to attend.
1621. Confined in jail, etc.
1622. Same.
1623. Same.
1624. Witness exonerated from arrest.
1625. Liability of officer making arrest.

Attendance of witnesses, what subpœna may require.

(1611.) SEC. 386. A *subpœna* may require not only the attendance of the person to whom it is directed, at a particular time and place to testify as a witness, but may also require him to bring with him any books, and papers, under his control, containing business accounts or transactions of a pecuniary character between the parties to the action, to be used as evidence. No person shall be required to attend as a witness before any court, judge, justice, referee or other officer out of the county in which he resides, unless the distance be less than thirty miles from his place of residence to [the] county of trial: *Provided*, that such witness shall have the right to demand payment in advance of his fees for one day's attendance, and his mileage to and from the place specified in the *subpœna*.

Proviso.

Subpœna, how issued.

(1612.) SEC. 387. The *subpœna* shall be issued as follows:

First—To require attendance before a court, it shall be issued in the name and under the seal of the court, before which the attendance is required.

Second—To require attendance out of court, before a judge, referee, justice, or other officer authorized to administer oaths or take testimony in any matter under the laws of this Territory, it shall be issued by the judge, referee, justice, or other officer before whom the attendance is required.

Third—To require attendance before a commissioner appointed to take testimony by a court of a foreign country, or of the United States, or of any State, or of a Territory of the United States, or any judge or justice of the peace of this Territory, it may be issued by a judge or justice of the peace in places within their respective jurisdictions, with like power to enforce attendance and to punish contempt of such *subpœna*, as such judge or justice could exercise if the *subpœna* directed the attendance of the witness before his own court, in a matter pending therein.

(1613.) SEC. 388. The service of a *subpœna* shall be made by showing the original, and stating its substance to the witness, or by reading it to him, giving or offering it to to him at the same time, if demanded by him, the fees to which he is entitled for traveling to and from the place designated, and one day's attendance there. Such service may be made by any person. **How served.**

(1614.) SEC. 389. If a witness conceal himself, for the purpose of evading the service of a *subpœna* upon him, he may, upon proof by affidavit of the concealment, and the materiality of his evidence, be punished for contempt by any court, or judge, issuing the *subpœna*, and may be liable to all penalties prescribed in section three hundred and ninety-four. **Same.**

(1615.) SEC. 390. A person present in court, or before a judicial officer, may be required to testify in the same manner as if he were in attendance upon a *subpœna* issued by such court or officer. **Persons present required to testify, etc.**

(1616.) SEC. 391. It shall be the duty of a witness, duly served with a *subpœna*, to attend at the time appointed, with any papers under his or her control required by the *subpœna*, to answer all pertinent and legal questions, and, unless sooner discharged, to remain till the testimony is closed. **Duty of witness.**

(1617.) SEC. 392. A witness shall answer questions legal and pertinent to the matter in issue, though his answer may establish a claim against himself; but he need not give an answer which will have a tendency to subject him to punishment for a felony, nor need give an answer which will have a direct tendency to degrade his character, unless it be to the very fact in issue, or to a fact from which the fact at issue would be presumed. But a witness shall answer as to the fact to his previous conviction for felony. **Questions witness must answer.**

(1618.) SEC. 393. Disobedience to a *subpœna*, or a refusal to be sworn, or to answer as a witness, or to subscribe an affidavit or deposition when required, may be punished **Disobedience to subpœna.**

as a contempt by the court or officer issuing the *subpœna* or requiring the witness to be sworn; and if the witness be a party, his complaint may be dismissed or his answer stricken out.

Same.

(1619.) SEC. 394. A witness disobeying a *subpœna* shall also be liable to forfeit, to the party aggrieved, a sum not exceeding one hundred dollars, and shall pay all damages which he may sustain by the failure of the witness to attend, which forfeiture and damages may be recovered in a civil action.

Failure to attend.

(1620.) SEC. 395. In case of failure of a witness to attend, the court or officer issuing the *subpœna*, upon proof of the service thereof, and of the failure of the witness, may issue a warrant to the sheriff of the county to arrest the witness and bring him before the court or officer where his attendance was required.

Confined in jail, etc.

(1621.) SEC. 396. If the witness be a prisoner, confined in a jail or prison within this Territory for any other cause than a sentence for felony, an order for his examination in the prison upon deposition, or for his temporary removal and production before a court or officer for the purpose of being orally examined, may be made by the court or judge thereof, in which the action or special proceeding is pending.

Same.

(1622.) SEC. 397. Such order can only be made upon affidavit, showing the nature of the action or proceeding, the testimony expected from the witness and its materiality.

Same.

(1623.) SEC. 398. If the witness be imprisoned in the county where the action or proceeding is pending, and for a cause other than a sentence for felony, his production may be required. In all other cases his examination, when allowed, shall be taken upon deposition.

Witness exonerated from arrest.

(1624.) SEC. 399. Every person who has been in good faith served with a *subpœna* to attend as a witness before a court, judge, commissioner, referee or other person, in a case where the disobedience of the witness may be punished as a contempt, shall be exonerated from arrest in a civil action while going to the place of attendance, necessarily remaining there and returning therefrom.

Liability of officer making arrest.

(1625.) SEC. 400. The arrest of a witness contrary to the last section shall be void; but an officer shall not be liable to the party for making the arrest in ignorance of the facts creating the exoneration, but shall be liable for any subsequent detention of the party, if such party claim the exemption and make an affidavit, stating:

First—That he has been served with a *subpœna* to attend as a witness before a court, officer or other person, specifying the same, the place of attendance, and the action or proceeding in which the *subpœna* was issued; and

Second—That he has not been thus served by his own procurement, with the intention of avoiding an arrest.

CHAPTER III.

OF AFFIDAVITS.

SECTION.
1626. Affidavits, how taken.
1627. In another State, &c.
1628. In foreign country.
SECTION.
1629. How certified when taken out of Territory.

(1626.) SEC. 401. An affidavit to be used before any court, judge or officer of this Territory may be taken before any judge or clerk of any court, or any justice of the peace or notary public in this Territory. **Affidavits, how taken.**

(1627.) SEC. 402. An affidavit taken in a State, or in a Territory of the United States, to be used in this Territory, shall be taken before a commissioner appointed by the governor of this Territory to take affidavits and depositions in such State or Territory, or before any judge or court of record having a seal: *Provided*, that a judge of a court of this Territory shall have power to appoint a special commissioner for such purpose. **In another State, etc.**

(1628.) SEC. 403. An affidavit taken in a foreign country to be used in this Territory shall be taken before an ambassador, minister, or consul of the United States, or before any judge of a court of record having a seal in such foreign country. **In foreign country.**

(1629.) SEC. 404. When an affidavit is taken before a judge of a court in a State or in a Territory of the United

How certified when taken out of Territory. States, or in a foreign country, the genuineness of the signature of the judge, the existence of the court, and the fact that such a judge is a member thereof, shall be certified by the clerk of the court, under the seal thereof.

CHAPTER IV.

OF DEPOSITIONS TAKEN IN THIS TERRITORY.

SECTION.
1630. Depositions, in what cases may be taken.
1631. How taken.
SECTION.
1632. Manner of examination, etc.
1633. May be read by either party.

Depositions, in what cases may be taken. (1630.) SEC. 405. The testimony of a witness in this Territory may be taken by deposition in an action at any time after the service of the summons or the appearance of the defendant, and in a special proceeding, after a question of fact has arisen therein in the following cases:

First—When the witness is a party to the action or proceeding, or a person for whose immediate benefit the action or proceeding is prosecuted or defended.

Second—When the witness resides out of the county in which his testimony is to be used.

Third—When the witness is about to leave the county where the action is to be tried, and will probably continue absent when the testimony is required.

Fourth—When the witness, otherwise liable to attend the trial, is nevertheless too infirm to attend, or resides within the county, but more than fifty miles from the place of trial.

How taken. (1631.) SEC. 406. Either party may have the deposition of a witness in this Territory taken before any judge or clerk of a court, or any justice of the peace or notary public in this Territory, on serving upon the adverse party previous notice of the time and place of examination, together with a copy of an affidavit, showing that the case is one mentioned in the last section. At any time during the forty days immediately after the service of summons by publication has been completed, and at any time thereafter, when the defendant has not appeared, and his residence is unknown to the plaintiff, the notice required by this section may be served upon the clerk of the court where the action is pending. Such notice shall be at least five days, and, in addition, one day for every twenty-five miles of the distance of the place of examination from the residence of the person upon whom the notice is served, unless, for a cause shown, a judge by order prescribe a shorter time. When a shorter time is prescribed, a copy of the order shall be served with the notice.

Manner of examination, etc.

(1632.) SEC. 407. Either party may attend such examination and put such questions, direct and cross, as may be proper. The deposition, when completed, shall be carefully read to the witness and corrected by him in any particular, if desired; it shall then be subscribed by the witness, certified by the judge or officer taking the deposition, enclosed in an envelope or wrapper, sealed and directed to the clerk of the court in which the action is pending, or to such person as the parties in writing may agree upon, and either delivered by the judge or officer to the clerk or such person, or transmitted through the mail or by some safe private opportunity, and thereupon such deposition may be used by either party upon the trial or other proceeding against any party giving or receiving the notice, subject to all legal exceptions. But if the parties attend at the examination, no objection to the form of an interrogatory shall be made at the trial, unless the same was stated at the time of the examination. If the deposition be taken by reason of the absence, or intended absence, from the county of the witness, or because he is too infirm to attend, proof by affidavit or oral testimony shall be made at the trial that the witness continues absent or infirm, to the best of the deponent's knowledge or belief. The deposition thus taken may be also read in case of the death of the witness.

May be read by either party.

(1633.) SEC. 408. When a deposition has been once taken, it may be read in any stage of the same action or proceeding by either party, and shall then be deemed the evidence of the party reading it.

CHAPTER V.

OF DEPOSITIONS TAKEN OUT OF THIS TERRITORY.

SECTION.
1634. Taken out of the Territory.
1635. How taken.
1636. Settling interrogatories.
1637. Commission, what to authorize.
1638. Postponement of trial on non-return.

Taken out of the Territory.

(1634.) SEC. 409. The testimony of a witness out of this Territory may be taken by deposition in an action at any time after the service of the summons or the appearance of the defendant, and in a special proceeding, at any time after a question of fact has arisen therein.

How taken.

(1635.) SEC. 410. The deposition of a witness out of this Territory shall be taken upon commission issued from the court, under the seal of the court, upon an order of the judge or court, on the application of either party, upon five days' previous notice to the other. It shall be issued to a person agreed upon by the parties, or if they do not agree, to any judge or justice of the peace selected by the officer granting the commission, or to a commissioner appointed by the governor of this Territory, to take affidavits and depositions in the States or Territories.

Settling interrogatories.

(1636.) SEC. 411. Such proper interrogatories, direct and cross, as the respective parties may prepare, to be settled, if the parties disagree as to their form, by the judge or officer granting the order of the commission, at a day fixed in the order, or at the time of granting the order for commission, may be annexed to the commission, or when the parties agree to that mode, the examination may be without written interrogatories.

Commission, what to authorize.

(1637.) SEC. 412. The commission shall authorize the commissioner to administer an oath to the witness, and to take his deposition in answer to the interrogatories, or when the examination is to be without interrogatories in respect to the question in dispute, and to certify the deposition to the court, in a sealed envelope directed to the clerk or other person designed or agreed upon, and forwarded to him by mail or other usual channel of conveyance.

(1638.) SEC. 413. A trial or other proceeding shall not be postponed by reason of a commission not returned, except upon evidence satisfactory to the court that the testimony of the witness is necessary, and that proper diligence has been used to obtain it. Postponement of trial on non-return.

CHAPTER VI.

OF PROCEEDINGS TO PERPETUATE TESTIMONY.

SECTION.
1639. Testimony, how perpetuated.
1640. Proceedings.
1641. Same.
1642. Same.

SECTION.
1643. Same.
1644. Effect of affidavit.
1645. Depositions, when to be used as evidence.

(1639.) SEC. 414. The testimony of a witness may be taken and perpetuated as provided in this chapter. Testimony, how perpetuated.

(1640.) SEC. 415. The applicant shall present to a judge a petition, verified by the oath of the applicant, stating: Proceedings

First—That the applicant expects to be a party to an action in a court in this Territory, and in such case the name or names of the person or persons whom he expects will be adverse parties; or,

Second—That the proof of some fact or facts is necessary to perfect the title to the property in which he is interested, or to establish marriage, descent, heirship, or any other matter which it may hereafter become material to establish, though no suit may at the time be anticipated, or if anticipated, he may not know the parties to such suit; and,

Third—The name of the witness to be examined and his place of residence, and a general outline of the facts expected to be proved.

(1641.) SEC. 416. The judge to whom such petition is presented shall make an order allowing the examination before any judge of a court of record and prescribing the notice to be given, which notice, if the parties are known and reside in this Territory, shall be personally served on Same.

them, and if unknown or non-residents, such notice shall be served on the clerk of the county where the property to be affected by such testimony is situated, and a copy thereof published in some newspaper, to be designated by the judge making the order.

Same.

(1642.) SEC. 417. Upon proof of the service of the notice as provided in the last section, it shall be the duty of the judge, before whom the testimony is ordered to be taken, to proceed to take the testimony of the witnesses named in said petition, upon the facts therein set forth, and the taking of the same may be continued from time to time, in the discretion of the judge.

Same.

(1643.) SEC. 418. The examination shall be by question and answer, unless the parties otherwise agree. The testimony, when completed, shall be carefully read to and subscribed by the witness, then certified by the judge, and immediately thereafter filed in the office of the clerk of the court of the county where it was taken, together with the order for the examination of the witnesses, the petition on which the same was granted, and the proof of the service of the notice.

Effect of affidavit.

(1644.) SEC. 419. The affidavits or other proof filed with the testimony, or certified copies thereof, shall be *prima facie* evidence of the facts stated therein.

Depositions, when to be used as evidence.

(1645.) SEC. 420. If the trial be had between the persons named in the petition as parties expectant, or their successors in interest, or between any parties wherein it may be material to establish the facts which such testimony proves or tends to prove, upon proof of the death or insanity of the witness, or of his inability to attend the trial by reason of age, sicknes or settled infirmity, the testimony, or certified copies thereof, may be used by either party, subject to all legal objections. But if the parties attend at the examination, no objection to the form of an interrogatory shall be made at the trial, unless the same was stated at the examination.

CHAPTER VII.

ADMINISTRATION OF OATHS AND AFFIRMATIONS.

SECTION.
1646. Who authorized to administer oaths.
SECTION.
1647. How administered.
1648. Affirmation, form of.

(1646.) SEC. 421. Every court of this Territory, every judge or clerk of any court, every justice of the peace, and every notary public, and every officer authorized to take testimony, or to decide upon the evidence in any proceeding, shall have power to administer oaths or affirmations. Who authorized to administer oaths.

(1647.) SEC. 422. When a person is sworn who believes in any other than the Christian religion, he may be sworn according to the peculiar ceremonies of his religion, if there be any such. How administered.

(1648.) SEC. 423. Any witness who desires it may, at his option, instead of taking an oath, make his solemn affirmation, or declaration, by assenting, when addressed in the following form: "You do solemnly affirm that the evidence you shall give in this issue (or matter), pending between   , and   , shall be the truth, the whole truth, and nothing but the truth." Assent to this affirmation shall be made by the answer "I do." A false affirmation or declaration shall be deemed perjury equally with a false oath. Affirmation, form of.

CHAPTER VIII.

INSPECTION OF DOCUMENTS AND MISCELLANEOUS PROVISIONS AS TO RECORDS AND WRITINGS.

SECTION.
1649. Court may order party to give copy, etc.
1650. Evidence of contents of writing.
1651. Alteration of writing to be accounted for.
1652. Judicial record, how proved.
1653. Same.
1654. Judicial record of foreign country, how proved.
1655. Copy of, when admissible.
1656. Printed volumes of statutes to be admitted as evidence.
1657. Seal of court, how impressed.

Court may order party to give copy, etc.

(1649.) SEC. 424. Any court in which an action is pending, or a judge thereof may, upon notice, order either party to give to the other within a specified time a copy, or permission to take a copy of any book, document or paper in his possession, or under his control, containing business accounts or transactions of a pecuniary character relating to the merits of the action, or the defense therein. If compliance with the order be refused, the court may exclude the book, document, or paper from being given in evidence, or if wanted as evidence by the party applying, may direct the jury to presume it to be such as he alleges it to be; and the court may also punish the party refusing for a contempt. This section shall not be construed to prevent a party from compelling another to produce such books, papers or documents, when he is examined as a witness, as are specified in section three hundred and eighty-six.

Evidence of contents of writing.

(1650.) SEC. 425. There shall be no evidence of the contents of a writing, other than the writing itself, except in the following cases:

First—When the original has been lost or destroyed; in which case proof of the loss or destruction shall first be made.

Second—When the original is in the possession of the party against whom the evidence is offered, and he fails to produce it after reasonable notice.

Third—When the original is a record or other document in the custody of a public officer, or officer of a corporation.

Fourth—When the original has been recorded and a certified copy of the record is made evidence by statute.

Fifth—When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time, and the evidence sought from them is only the general result of the whole.

Alteration of writing to be accounted for.

(1651.) SEC. 426. The party producing a writing as genuine, which has been altered; or appears to have been altered after its execution, in a part material to the question in dispute, and such alteration is not noted on the writing, shall account for the appearance or alteration. He may show that the alteration was made by another without his concurrence, or was made with the consent of the parties affected by it, or otherwise properly or innocently made. If he do that, he may give the writing in evidence, but not otherwise.

Judicial record, how proved.

(1652.) SEC. 427. A judicial record of this Territory, of the United States, or of any State or Territory, may be proved by the production of the original, or a copy thereof certified by the clerk, or other person having the legal custody thereof, under the seal of the court, to be a true copy of such record.

Same.

(1653.) SEC. 428. The records and judicial proceedings of the court of any State, or Territory, of the United States, may be proved or admitted in evidence in the courts of this Territory by the attestation of the clerk and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice or presiding magistrate, as the case may be, that the said attestation is in due form, and the records and judicial proceedings had in said States or Territories, in courts of justices of the peace or other courts of inferior jurisdiction, having no clerk or seal of court, may be admitted in evidence in the courts of this Territory upon the sworn certificate of the justice of the peace or other judicial officer having the legal custody of the same, showing:

First—That the record or judicial proceeding offered in evidence has been compared by the justice or other judicial officer with the original, and is an exact transcript of the whole of it.

Second—That such original was in the custody of the justice or other judicial officer.

Third—That said justice's court or other inferior court had no seal or clerk.

Fourth—That said justice or other judicial officer made oath to said certificate before a notary public or clerk of a court having a seal.

Judicial record of foreign country, how proved.

(1654.) SEC. 429. A judicial record of a foreign country may be proved by the production of a copy thereof, certified by the clerk, with the seal of the court annexed, if there be a clerk and seal, or by the legal keeper of the record, with the seal of his office annexed, if there be a seal, to be a true copy of such record, together with a certificate of a judge of the court, that the person making the certificate is the clerk of the court, or the legal keeper of the record, and in either case that the signature is genuine, and the certificate in due form; and also together with the certificate of the minister or embassador of the United States, or of a consul of the United States, in such foreign country, that there is such a court, specifying generally the nature of its jurisdiction, and verifying the signature of the judge and clerk, or other legal keeper of the record.

Copy of, when admissible.

(1655.) SEC. 430. A copy of the judicial record of a foreign country shall also be admissible in evidence upon proof:

First—That the copy offered has been compared by the witness with the original, and is an exact transcript of the whole of it.

Second—That such original was in the custody of the clerk of the court or other legal keeper of the same; and,

Third—That the copy is duly attested by a seal, which is proved to be the seal of the court where the record remains, if it be the record of a court, or if there be no such seal, or if it be not a record of a court, by the signature of the legal keeper of the original.

Printed volumes of statutes to be admitted as evidence.

(1656.) SEC. 431. Printed copies in volumes of statutes, code or other written law, enacted by any State or Territory, or foreign government, purporting or proved to have been published by the authority thereof, or proved to be commonly admitted as evidence of the existing law, in the courts and judicial tribunals of such State, Territory, or government, shall be admitted by the courts and officers of this Territory on all occasions as presumptive evidence of such laws.

Seal of court, how impressed.

(1657.) SEC. 432. A seal of a court or public office when required to any writ or process, or proceeding, or to authenticate a copy of any record or document, may be impressed with wax, wafer, or any other substance, and then attached to the writ, process, or proceeding, or to the copy of the record or document, or it may be impressed on the paper alone.

TITLE XII.

OF THE WRIT OF CERTIORARI AND OF MANDAMUS.

CHAPTER I. The writ of certiorari or review.
CHAPTER II. The writ of mandate or mandamus.

CHAPTER I.

THE WRIT OF CERTIORARI OR REVIEW.

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1660. Application for, how made.
1661. To whom directed.
1662. Writ, what to command.

SECTION.
1663. Same.
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1665. Review upon, extent of.
1666. Return of judgment.
1667. Copy to be transmitted.
1668. Judgment roll; appeal.

Denomination.

(1658.) SEC. 433. The writ of *certiorari* may be denominated the writ of review.

By what court and in what cases granted.

(1659.) SEC. 434. This writ may be granted on application by any court of this Territory, except a justice's, or alderman's or mayor's court; the writ shall be granted in all cases when an inferior tribunal, board, or officer, exercising judicial functions, has exceeded the jurisdiction of such tribunal, board, or officer, and there is no appeal, nor in the judgment of the court, any plain, speedy and adequate remedy.

Application for, how made.

(1660.) SEC. 435. The application shall be made on affidavit by the party beneficially interested, and the court may require a notice of the application to be given to the adverse party, or may grant an order to show cause why it should not be allowed, or may grant the writ without notice.

To whom directed.

(1661.) SEC. 436. The writ may be directed to the inferior tribunal, board, or officer, or to any other person having the custody of the record or proceedings to be certified. When directed to a tribunal, the clerk, if there be one, shall return the writ with the transcript required.

Writ, what to command.

(1662.) SEC. 437. The writ of review shall command the party to whom it is directed to certify fully to the court issuing the writ, at a specified time and place, and annex to the writ a transcript of the record and proceeding (describing or referring to them with convenient certainty), that the same may be reviewed by the court, and requiring the party in the meantime to desist from further proceedings in the matter to be reviewed.

Same.

(1663.) SEC. 438. If a stay of proceedings be not intended, the words requiring the stay shall be omitted from the writ. These words may be inserted or omitted, in the sound discretion of the court, but if omitted, the power of the inferior court or officer shall not be suspended nor the proceedings stayed.

How served.

(1664.) SEC. 439. The writ shall be served in the same manner as a summons in a civil action, except when otherwise expressly directed by the court.

Review upon, extent of.

(1665.) SEC. 440. The review upon this writ shall not be extended further than to determine whether the inferior tribunal, board, or officer has regularly pursued the authority of such tribunal, board, or officer.

Return of judgment.

(1666.) SEC. 441. If the return to the writ be defective, the court may order a further return to be made. When a full return has been made, the court shall proceed to hear the parties, or such of them as may attend for that purpose, and may thereupon give judgment, either affirming or annulling or modifying the proceedings below.

Copy to be transmitted.

(1667.) SEC. 442. A copy of the judgment, signed by the clerk, shall be transmitted to the inferior tribunal, board, or officer having the custody of the record or proceeding certified up.

Judgment roll.

(1668.) SEC. 443. A copy of the judgment, signed by the clerk, entered upon or attached to the writ and return, shall constitute the judgment roll. If the proceeding be had in any other than the supreme court, an appeal may be taken from the judgment in the same manner and upon the same terms as from a judgment in a civil action.

Appeal.

CHAPTER II.

THE WRIT OF MANDATE OR MANDAMUS.

SECTION.
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1672. To be either alternative or peremptory.
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SECTION.
1676. Objection to sufficiency of answer.
1677. New trial.
1678. Duty of clerk to transmit verdict; argument of application.
1679. Same.
1680. Judgment; execution.
1681. Writ, how served.
1682. Refusal or disobeying peremptory mandamus.

(1669.) SEC. 444. The writ of *mandamus* may be denominated the writ of mandate. **Writ denominated.**

(1670.) SEC. 445. It may be issued by any court in this Territory except a justice's, to any inferior tribunal, corporation, board or person, to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust or station; or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled and from which he is unlawfully precluded by such inferior tribunal, corporation, board or person. **By what court and in what cases may be issued.**

(1671.) SEC. 446. This writ shall be issued in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law. It shall be issued upon affidavit, on the application of the party beneficially interested. **How issued.**

(1672.) SEC. 447. The writ shall be either alternative or peremptory. The alternative writ shall state generally the allegation against the party to whom it is directed, and command such party, immediately after the receipt of the writ, or at some other specified time, to do the act required to be performed, or to show cause before the court, at a specified time and a place, why he has not done so. The peremptory writ shall be in a similar form, except that the words requiring the party to show cause why he has not done as commanded, shall be omitted, and a return day shall be inserted. **To be either alternative or peremptory.**

When alternative or peremptory to be issued.

(1673.) SEC. 448. When the application to the court is made without notice to the adverse party, and the writ be allowed, the alternative shall be first issued; but if the application be upon due notice; and the writ be allowed, the peremptory may be issued in the first instance. The notice of the application, when given, shall be at least ten days. The writ shall not be granted by default. The case shall be heard by the court, whether the adverse party appear or not.

Answer to writ.

(1674.) SEC. 449. On the return day of the alternative, or the day on which the application of the writ is noticed, or such further day as the court may allow, the party on whom the writ or notice shall have been served may show cause by answer under oath, made in the same manner as an answer to a complaint in a civil action.

When court may order trial by jury.

(1675.) SEC. 450. If an answer be made, which raises a question as to a matter of fact essential to the determination of the motion, and affecting the substantial rights of the parties, and upon the supposed truth of the allegation of which the application for the writ is based, the court may, in its discretion, order the question to be tried before a jury, and postpone the argument until such trial can be had, and the verdict certified to the court. The question to be tried shall be distinctly stated in the order for trial, and the county shall be designated in which the same shall be had. The order may also direct the jury to assess any damages which the applicant may have sustained in case they find for him.

Objection to sufficiency of answer.

(1676.) SEC. 451. On the trial the applicant shall not be precluded by the answer of any valid objection to its sufficiency, and may countervail it by proof either in direct denial or by way of avoidance.

New trial.

(1677.) SEC. 452. If either party be dissatisfied with the verdict of the jury, he may move for a new trial upon a statement prepared as provided in section one hundred and ninety-five. The motion for a new trial may, upon reasonable notice, be brought on before the judge of the court in which the cause was tried, either in term or vacation. If a new trial be granted, the jury shall, within five days thereafter, unless the parties agree on a longer time, be summoned to try the issue. After a second verdict in favor of the same party, a new trial shall not be had.

Duty of clerk to transmit verdict.

(1678.) SEC. 453. If no notice for a new trial be given, or if given be denied, the clerk, within five days after the rendition of the verdict, or denial of the motion, shall transmit to the court in which the application for the writ is pending, a certified copy of the verdict, attached to the order of trial; after which, either party may bring on the argument of the application, upon reasonable notice to the adverse party.

Argument of application.

(1679.) SEC. 454. If no answer be made, the case shall be heard on the papers of the applicant. If an answer be made which does not raise a question such as is mentioned in section four hundred and fifty, but only such matters as may be explained or avoided by a reply, the court may, in its discretion, grant time for replying. If the answer, or answer and reply, raise only questions of law, or put in issue immaterial statements, not affecting the substantial rights of the parties, the court shall proceed to hear, or fix a day for hearing the argument of the case.

Same.

(1680.) SEC. 455. If judgment be given for the applicant, he shall recover the damages which he shall have sustained, as found by the jury; or as may be determined by the court or referees, upon a reference to be ordered, together with costs; and for such damages and costs, an execution may issue, and peremptory mandate shall also be awarded without delay.

Judgment, execution.

(1681.) SEC. 456. The writ shall be served in the same manner as a summons in a civil action, except when otherwise expressly directed by order of the court.

Writ, how served.

(1682.) SEC. 457. When a peremptory mandate has been issued and directed to any inferior tribunal, corporation, board or person, if it appear to the court that any member of such tribunal, corporation or board, or such person, upon whom the writ has been personally served, has, without just excuse, refused or neglected to obey the same, the court may, upon motion, impose a fine not exceeding five hundred dollars. In case of persistence in a refusal of obedience, the court may order the party to be imprisoned for a period not exceeding one month, and may make any orders necessary and proper for the complete enforcement of the writ.

Refusal for disobeying peremptory mandamus.

TITLE XIII.

OF CONTEMPTS AND THEIR PUNISHMENTS.

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1683. Contempt, what deemed.
1684. When punishable summarily.
1685. Attachment for, when issuable.
1686. Bail.
1687. Duty of officer.
1688. Discharge from arrest.
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1690. Investigation of charges.
1691. Penalty if found guilty.
SECTION.
1692. Same for omission to perform certain acts within power.
1693. Indictment.
1694. Proceedings when defendant does not appear.
1695. Duty of officer having person in custody.
1696. Contempt, punishment for.

Contempt, what deemed.

(1683.) SEC. 458. The following acts or omissions shall be deemed contempts:

First—Disorderly, contemptuous or insolent behavior towards the judge, whilst holding court, or engaged in his judicial duties at chambers, or towards referees or arbitrators whilst sitting on a reference or arbitration, or other judicial proceeding.

Second—A breach of the peace, boisterous conduct or violent disturbance in the presence of the court or in its immediate vicinity, tending to interrupt the due course of a trial or other judicial proceeding.

Third—Disobedience or resistance to any lawful writ, order, rule or process issued by the court or judge at chambers.

Fourth—Disobedience of a *subpœna* duly served, or refusing to be sworn or answer as a witness.

Fifth—Rescuing any person or property, in the custody of an officer, by virtue of an order of process of such court, or judge at chambers.

Sixth—Disobedience to the order or direction of the court, made pending the trial of an action, in speaking to or in the presence of a juror, concerning an action in which such juror has been impaneled to determine, or in any manner approaching or interfering with such juror with the intent to influence his verdict.

When punishable summarily.

(1684.) SEC. 459. When a contempt is committed in the immediate view and presence of the court, or judge at chambers, it may be punished summarily, for which an order shall be made, reciting the facts as occurring in such immediate view and presence, adjudging that the person proceeded against is thereby guilty of a contempt, and that he be punished as therein prescribed. When the contempt is not committed in the immediate view and presence of the court, or judge at chambers, an affidavit shall be presented to the court, or judge, of the facts constituting the contempt, or a statement of the facts by the referees or arbitrators.

Attachment for, when issuable.

(1685.) SEC. 460. When the contempt is not committed in the immediate view and presence of the court, or judge, a warrant of attachment may be issued to bring the person charged to answer, or, without a previous arrest, a warrant of commitment may, upon notice, or upon an order to show cause, be granted; and no warrant of commitment shall be issued without such previous attachment to answer, or such notice or order, to show cause.

Bail.

(1686.) SEC. 461. Whenever a warrant of attachment is issued pursuant to this chapter, the court, or judge, shall direct, by an endorsement on such warrant, that the person charged may be let to bail for his appearance, in an amount to be specified in such endorsement.

Duty of officer.

(1687.) SEC. 462. Upon executing the warrant of attachment, the officer shall keep the person in custody, bring him before the court or judge, and detain him until an order be made in the premises, unless the person arrested entitle himself to be discharged, as provided in the next section.

Discharge from arrest.

(1688.) SEC. 463. When a direction to let the person arrested to bail is contained in the warrant of attachment, or endorsed thereon, he shall be discharged from the arrest, upon executing and delivering to the officer, at any time before the return day of the warrant, a written undertaking, with two sufficient sureties, to the effect, that the person arrested will appear on the return day of the warrant, and abide the order of the court or judge thereupon; or they will pay as may be directed, the sum specified in the warrant.

Return of warrant.

(1689.) SEC. 464. The officer shall return the warrant of arrest and the undertaking, if any, received by him from the person arrested, by the return day specified therein.

Investigation of charges.

(1690.) SEC. 465. When the person arrested has been brought up, or has appeared, the court or judge shall proceed to investigate the charge, and shall hear any answer which the person arrested may make to the same, and may examine witnesses for or against him, for which an adjournment may be had from time to time, if necessary.

Penalty, if found guilty.

(1691.) SEC. 466. Upon the answer and evidence taken, the court, or judge, shall determine whether the person proceeded against is guilty of the contempt charged; and if it be adjudged that he is guilty of the contempt, a fine may be imposed on him not exceeding two hundred dollars, or he may be imprisoned not exceeding five days, or both.

Same, for omission to perform certain acts within power.

(1692.) SEC. 467. When the contempt consists in the omission to perform an act which is yet in the power of the person to perform, he may be imprisoned until he have performed it, or until released by the court, and, in that case, the act shall be specified in the warrant of commitment.

Indictment.

(1693.) SEC. 468. Persons proceeded against, according to the provisions of this chapter, shall also be liable to indictment for the same misconduct, if it be an indictable offense, but the court before which a conviction is had on the indictment, in passing sentence, shall take into consideration the punishment before inflicted.

Proceedings when defendant does not appear.

(1694.) SEC. 469. When the warrant of arrest has been returned served, if the person arrested do not appear on the return day, the court, or judge, may issue another warrant of arrest, or may order the undertaking to be prosecuted, or both. If the undertaking be prosecuted, the measure of damages in the action shall be the extent of the loss or injury sustained by the aggrieved party by reason of the misconduct for which the warrant was issued, and the costs of the proceeding.

Duty of officer having person in custody.

(1695.) SEC. 470. Whenever, by the provisions of this chapter, an officer is required to keep a person arrested, on a warrant of attachment, in custody, and to bring him before a court, or judge, the inability, from illness or otherwise, of the person to attend, shall be a sufficient excuse for not bringing him up; and the officer shall not confine a person arrested upon the warrant, in a prison, or otherwise restrain him of personal liberty, except so far as may be necessary to secure his personal attendance.

Contempt, punishment for.

(1696.) SEC. 471. In cases of contempt, the punishment shall be by fine or imprisonment, or both, but no fine shall exceed the sum of two hundred dollars, and no imprisonment shall exceed the period of five days, except as provided in section four hundred and sixty-seven.

TITLE XIV.

OF COSTS.

SECTION.
1697. Compensation of attorneys, etc.
1698. When allowed of course to plaintiff.
1699. When several actions on one bond, etc.
1700. When allowed of course to defendant.
1701. When allowed or not.
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1706. When defendant has tendered amount due.
1707. In action where administrator, etc., is party.
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1709. Memorandum of, to be delivered to clerk.
1710. To be included in judgment.
1711. Security for.
1712. Same.
1713. Same.

Compensation of attorneys, etc.

(1697.) SEC. 472. The measure and mode of compensation of attorneys and counselors shall be left to the agreement of the parties, but there may be allowed to the prevailing party in any action in the courts, his costs in the action or special proceeding in the nature of an action.

When allowed of course to plaintiff.

(1698.) SEC. 473. Costs shall be allowed of course to the plaintiff, upon a judgment in his favor in the following cases:

First—In an action for the recovery of real property.

Second—In an action to recover the possession of personal property, when the value of the property amounts to one hundred dollars or over, such value shall be determined by the jury, court or referee by whom the action is tried.

Third—In an action for the recovery of money or damages, where plaintiff recovers one hundred dollars or over.

Fourth—In a special proceeding in the nature of an action.

When several actions on one bond, etc.

(1699.) SEC. 474. When several actions are brought on one bond, undertaking, promissory note, bill of exchange, or other instrument in writing, or in any other case for the same cause of action, against several parties who might have been joined as defendants in the same action, no costs shall be allowed to the plaintiff in more than one of such actions, which may be at his election, if the party proceeded against in the other actions were at the commencement of the previous action openly within this Territory.

When allowed of course to defendant.

(1700.) SEC. 475. Costs shall be allowed of course to the defendant upon a judgment in his favor in the actions mentioned in section four hundred and seventy-three, and in a special proceeding in the nature of an action.

When allowed or not.

(1701.) SEC. 476. In other actions than those mentioned in section four hundred and seventy-three, costs may be allowed or not; and if allowed, may be apportioned between the parties, on the same or adverse sides, in the discretion of the court; but no costs shall be allowed in any action in the district courts for the recovery of money or damages when the plaintiff recovers less than three hundred dollars.

When plaintiff fails to recover, against all defendants.

(1707.) SEC. 477. When there are several defendants, in the actions mentioned in section four hundred and seventy-three, not united in interest, and making separate defenses, by separate answers, and the plaintiff fails to recover judgment against all, the court shall award costs to such of the defendants as have judgment in their favor.

Appeal.

(1703.) SEC. 478. In the following cases the costs of an appeal shall be in the discretion of the court:

First—When a new trial is ordered.

Second—When a judgment is modified.

Referees.

(1704.) SEC. 479. The fees of referees shall be not exceeding five dollars to each, for every day spent in the business of the reference; but the parties may agree in writing upon any other rate of compensation, and thereupon such rate shall be allowed.

Costs when trial postponed.

(1705.) SEC. 480. When an application is made to a court or referee to postpone a trial, the payment of costs occasioned by the postponement, may be imposed, in the discretion of the court or referee, as a condition of granting the same.

When defendant has tendered amount due.

(1706.) SEC. 481. When in an action for the recovery of money only, the defendant alleges in his answer that before the commencement of the action, he tendered to the plaintiff the full amount to which he was entitled, and thereupon deposits in court, for the plaintiff, the amount so tendered, and the allegation be found to be true, the plaintiff shall not recover costs, but shall pay cost to the defendant.

In action where administrator, etc., is party.

(1707.) SEC. 482. In an action prosecuted or defended by an executor, administrator, trustee of express trust, or a person expressly authorized by statute, costs may be recovered as in an action by, and against, a person prosecuting and defending in his own right; but such costs shall, by the judgment, be made chargeable only upon the estate, fund, or party represented, unless the court shall direct the same to be paid by the plaintiff or defendant, personally, for mismanagement or bad faith in the action or defense.

(1708.) SEC. 483. When the decision of a court of inferior jurisdiction in a special proceeding is brought before a court of higher jurisdiction for a review in any other way than by appeal, the same costs shall be allowed as in cases on appeal, and may be collected by execution, or in such manner as the court may direct, according to the nature of the case. On review.

(1709.) SEC. 484. The party in whose favor judgment is rendered, and who claims his costs, shall deliver to the clerk of the court, within two days after the verdict or decision of the court, a memorandum of the items of his costs in the action or proceeding, which memorandum shall be verified by the oath of the party or his attorney, stating that the items are correct, and that they have been necessarily incurred in the action or proceeding. Memorandum of, to be delivered to clerk.

(1710.) SEC. 485. The clerk shall include in the judgment entered up by him, any interest in the verdict or decision of the court or referee, from the time it was rendered or made, and the costs, if the same have been taxed or ascertained, and he shall, within two days after the same shall be taxed or ascertained, if not included in the judgment, insert the same in a blank to be left in the judgment for that purpose, and shall make a similar insertion of the costs in the copies and docket of the judgment. To be included in judgment.

(1711.) SEC. 486. When a plaintiff in an action resides out of the Territory, or is a foreign corporation, security for the costs and charges which may be awarded against such plaintiff, may be required by the defendant. When required, all proceedings in the action shall be stayed until an undertaking, executed by two or more persons, be filed with the clerk, to the effect that they will pay such costs and charges as may be awarded against the plaintiff by judgment, or in the progress of the action, not exceeding the sum of three hnndred dollars. A new or an additional undertaking may be ordered by the court, or judge, upon proof that the original undertaking is insufficient security, and proceedings in the action stayed until such new or additional undertaking be executed and filed. Security for costs.

(1712.) SEC. 487. Each of the sureties on the undertaking, mentioned in the last section, shall annex to the same, an affidavit that he is a resident and householder or free- Same holder within the county, and is worth double the amount specified in the undertaking, over and above all his just debts and liabilities, exclusive of property exempt from execution.

Same.

(1713.) SEC. 488. After the lapse of thirty days from the service of notice that security is required, or of an order for new or additional security, upon proof thereof, and that no undertaking, as required, has been filed, the court, or judge, may order the action to be dismissed.

TITLE XV.

OF MOTIONS, ORDERS, NOTICES, SERVICE OF PAPERS, AND MISCELLANEOUS PROVISIONS.

SECTION.
1714. Motions, etc.
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SECTION.
1724. Successive actions on same contract.
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1728. Referees, majority may act.
1729. Time, how computed.
1730. Paper without the title of the action.
1731. Cause of action in another State, etc.

Motions, etc.

(1714.) SEC. 489. Every direction of a court, or judge, made or entered in writing, and not included in a judgment, is denominated an order. An application for an order is a motion.

Where to be made.

(1715.) SEC. 490. Motions shall be made in the court in which the action is brought.

Notice of.

(1716.) SEC. 491. When a written notice of a motion is necessary, it shall be given ten days before the time appointed for the hearing, but the court, or judge, may prescribe a shorter time.

(1717.) SEC. 492. When a notice of a motion is given, or an order to show cause is made returnable before a judge out of court, and at the time fixed for the motion, or on the return day of the order, the judge is unable to hear the parties, the matter shall stand adjourned until the further order of the court or judge. Shall stand adjourned.

(1718.) SEC. 493. Written notices and other papers, when required to be served on the party or an attorney, shall be served in the manner prescribed in the next three sections, when not otherwise provided; but nothing in this title shall be applicable to original or final process, or any proceedings to bring a party into contempt. Service of papers, how made.

(1719.) SEC. 494. The service may be personal, by delivery to the party or his attorney, on whom the service is required to be made, or it may be as follows: Same.

First—If upon an attorney, it may be made during his absence from his office, by leaving the notice or other papers with his clerk therein, or with a person having charge thereof, between the hours of eight in the morning and six in the afternoon, or by leaving them at the attorney's residence, with some person of suitable age and discretion, or by mail, directed to such attorney.

Second—If upon a party, it may be made by leaving the notice or other paper at his residence, between the hours of eight in the morning and six in the evening, with some person of suitable age and discretion, or by mail, directed to such party.

(1720.) SEC. 495. Service by mail may be made, when the person making the service, and the person on whom it is to be made, reside at different places, between which there is a regular communication by mail. When served by mail.

(1721.) SEC. 496. In case of service by mail, the notice or other paper shall be deposited in the post office, addressed to the person on whom it is to be served, at his place of residence, and the postage paid, but the service shall not be deemed complete until the notice or other paper be received. And, in such case, the time of service shall be increased one day for every twenty-five miles distance between the place of deposit and place of address. Same.

(1722.) SEC. 497. A defendant shall be deemed to appear in an action when he answers, demurs, or gives the plaintiff written notice of his appearance, or when an attorney gives notice of appearance for him. After appearance, a defendant, or his attorney, shall be entitled to notice of When defendant deemed to have appeared.

all subsequent proceedings of which notice is required to be given. But, where a defendant has not appeared, service of notice or papers need not be made upon him, unless he be imprisoned for want of bail.

Service after appearance, etc.

(1723.) SEC. 498. When a plaintiff or a defendant who has appeared, resides out of the Territory, and has no attorney in the action or proceeding, the service may be made on the clerk for him. But in all cases where a party has an attorney in the action or proceeding, the service of the papers, when required, shall be upon the attorney instead of the party, except of *subpœnas*, of writs, and other process issued in the suit, and of papers to bring him into contempt.

Successive actions on same contract.

(1724.) SEC. 499. Successive actions may be maintained upon the contract or transaction, whenever, after the former action, a new cause of action arises therefrom.

When may be consolidated.

(1725.) SEC. 500. Whenever two or more actions are pending at one time between the same parties, and in the same court, upon causes of action which might have been joined, the court may order the actions to be consolidated into one.

Actions to determine adverse claim.

(1726.) SEC. 501. An action may be brought by one person against another, for the purpose of determining an adverse claim which the latter makes against the former, for money or property, upon an alleged obligation; and also against two or more persons, for the purpose of compelling one to satisfy a debt due the other, for which the plaintiff is bound as security.

Register of actions.

(1727.) SEC. 502. The clerk shall keep, among the records of the court, a register of actions. He shall enter therein the title of the action, with brief notes under it, from time to time, of all papers filed, and proceedings had therein.

Referees, majority may act.

(1728.) SEC. 503. When there are three referees, or three arbitrators, all shall meet, but two of them may do any act which might be done by all.

Time, how computed.

(1729.) SEC. 504. The time within which an act is to be done, as provided in this act, shall be computed by excluding the first day, and including the last. If the last day be Sunday, it shall be excluded.

Paper, without the title of the action.

(1730.) SEC. 505. An affidavit, notice, or other paper, without the title of the action or proceeding in which it is made, or with a defective title, shall be as valid and effectual for any purpose as if duly entitled, if it intelligibly refer to such action or proceeding.

(1731.) SEC. 506. When a cause of action has arisen in a State, or other Territory, or in a foreign country, and by the laws thereof an action thereon cannot there be maintained against a person by reason of the lapse of time, an action thereon shall not be maintained against him in this Territory, except in favor of a citizen thereof who has held the cause of action from the time it accrued. Cause of action in another State, etc.

TITLE XVI.

OF PROCEEDINGS IN CIVIL CASES, IN JUSTICES COURTS.

CHAPTER I. Of parties, time and place of commencing actions in justices' courts.
CHAPTER II. Summons, arrest, etc.
CHAPTER III. Pleadings and trial.
CHAPTER IV. Judgment and execution.
CHAPTER V. General provisions.

CHAPTER I.

OF THE PARTIES AND THE TIME AND PLACE OF COMMENCING ACTIONS IN JUSTICES' COURTS.

SECTION.
1732. Parties to actions in justices' courts; jurisdiction.
1733. May appear in person or by attorney.
1734. Jurisdiction of the person.
1735. Judgment may be entered upon confession.
1736. Further jurisdiction.

(1732.) SEC. 507. The provisions of title one of this act as to parties to actions, shall be applicable to actions of which a justice's court has jurisdiction. Justices' courts shall have jurisdiction of the following actions and proceedings: Parties to actions in justices' courts. Jurisdiction.

First—Of an action arising on contract for the recovery of money only, if the sum claimed be less than three hundred dollars.

Second—Of an action for damages for injury to the person, or for taking or detaining personal property, or for injuring real or personal property, if the damages claimed be less than three hundred dollars.

Third—Of an action for a fine, penalty or forfeiture less than three hundred dollars given by statute.

Fourth—Of an action upon a bond conditioned for the payment of money of a sum less than three hundred dollars, though the penalty exceed that sum, the judgment to be given for the sum actually due. When the payments are made by installments an action may be brought for each installment as it becomes due.

Fifth—Of an action upon a surety bond or undertaking, though the penalty exceed, if the amount claimed be less than three hundred dollars.

Sixth—Of an action to recover the possession of personal property, when the value of such property be less than three hundred dollars.

Seventh—To take and enter judgment on the confession of a defendant when the amount confessed be less than three hundred dollars.

Eighth—Of actions for the possession of lands and tenements where the relation of landlord and tenant exists.

Ninth—Of proceedings respecting vagrants and disorderly persons.

Tenth—Of suits for the collection of taxes, where the amount of tax sued for is less than three hundred dollars. The jurisdiction conferred by this section shall not extend to a civil action in which the title to real estate or mining claims or questions as to the boundaries of lands are involved, or to actions to enforce mechanics' liens; and if questions of titles to real property be involved, or cases involving such questions shall be disposed of as hereafter provided in this act. The courts held by justices of the peace shall be denominated justices' courts. They shall have no terms, but shall always be open. Justices' courts shall be held in their respective precincts.

May appear in person or by attorney.

(1733.) SEC. 508. Parties in justices' courts may prosecute or defend in person or by attorney; and any person, on the request of a party, may act as his attorney, except that the constable, by whom the summons or jury process was served, shall not appear or act on the trial in behalf of either party.

Jurisdiction of person.

(1734.) SEC. 509. No person shall be held to answer to any summons issued against him from a justice's court, in a civil action, in any precinct other than the one in which he shall reside, except in the cases following:

First—When there shall be no justice's court for the precinct in which the defendant may reside, or no justice competent to act on the case.

Second—When two or more persons shall be jointly, or jointly and severally, bound in any debt or contract, or otherwise jointly liable in the same action and reside in different precincts of the same county, or in different counties, the plaintiff may prosecute his action in a justice's court of the precinct in which any of the debtors, or other persons liable, may reside.

Third—In case of injury to the person, or to real or personal property, the plaintiff may prosecute his action in the precinct where the injury was committed.

Fourth—When personal property unjustly taken or detained is claimed, or damages therefor are claimed, the plaintiff may bring his action in any precinct in which the property may be found, or in which the property was taken.

Fifth—When the defendant is a non-resident of the county, he may be sued in any precinct wherein he may be found.

Sixth—When a person has contracted to perform any obligation at a particular place, and resides in another precinct, he may be sued in the precinct in which such obligation is to be performed, or in which he resides.

Judgment may be entered upon confession.

(1735.) SEC. 510. Judgment upon confession may be entered up in any justice's court in the Territory specified in the confession. The provisions of title ten, chapter two, of this act shall apply to such confession, the word "justice" being substituted for that of clerk wherever it may occur.

Further jurisdiction.

(1736.) SEC. 511. Justices' courts shall have jurisdiction of an action upon the voluntary appearance of the parties without summons, without regard to their residences or the place where the cause of action arose, or the subject matter of action may exist.

CHAPTER II.

SUMMONS, ARREST, ATTACHMENT AND CLAIM OF PERSONAL PROPERTY.

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1740. Time of service and appearance.
1741. How served.
1742. Sections made applicable to justices' courts; proviso.
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SECTION.
1745. When defendant may be taken before another justice.
1746. Duty of officer making arrest.
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1748. Defendant under arrest may demand an immediate trial.
1749. How defendant may obtain adjournment.
1750. Sections applicable to justices' courts; proviso.

Actions, how commenced.

(1737.) SEC. 512. Actions in justices' courts shall be commenced by filing a copy of the account, note, bill, bond or instrument upon which the action is brought, or a concise statement in writing of the cause of action, and the issuance of a summons thereon, or by the voluntary appearance and pleadings of the parties without summons. In the latter case the action shall be deemed commenced at the time of appearance.

Guardian, how appointed.

(1738.) SEC. 513. When a guardian is necessary, he shall be appointed by the justice, as follows:

First—If the minor be a plaintiff, the appointment shall be made before the summons is issued, upon the application of the minor, if he be of the age of fourteen years or upwards; if under that age, upon the application of some relative or friend. The consent in writing of the guardian to be appointed, and to be responsible for costs, if he fail in the action, shall be first filed with the justice.

Second—If the minor be defendant, the guardian shall be appointed at the time the summons is returned or before the pleadings. It shall be the right of the minor to nominate his own guardian, if the minor be over fourteen years of age, and the proposed guardian be present and consent in writing to be appointed. Otherwise the justice may appoint any suitable person who gives such consent.

Summons, form of.

(1739.) SEC. 514. The summons shall be addressed to the defendant by name, or if his name be unknown, by a fictitious name, and shall summon him to appear before the justice at his office, naming its precinct, and at a time specified therein, to answer the complaint of the plaintiff, for a cause of action therein described, in general terms, sufficient to apprise the defendant of the nature of the caim against him; and, in action for money or damages, shall state the amount for which the plaintiff will take judgment, if the defendant fail to appear and answer. It shall be subscribed by the justice before whom it is returnable.

Time of service and appearance.

(1740.) SEC. 515. The time mentioned in the summons for the appearance of the defendant, and the time of service shall be as follows:

First—When the summons is accompanied with an order to arrest the defendant, it shall be returnable immediately.

Second—When the defendant is not a resident of the precinct, or when the plaintiff is not a resident, it shall be returnable not more than two days from its date, and shall be served at least one day before the time for appearance, except in cases where the summons is to be served by publication, or out of the Territory; or by posting notices thereof, when it shall be made returnable at any time designated by the justice, not exceeding sixty days from the date of its issuance.

Third—In all other cases it shall be returnable in not less than two or more than ten days from its date, and shall be served at least two days before the time for appearance.

How served.

(1741.) SEC. 516. The summons shall be served by the sheriff, or a constable of the county, or by any male citizen of the United States over the age of twenty-one years as follows:

First—If the action be against a corporation, by a delivery of a copy to the president, or other head of the corporation, or to the secretary, cashier, or managing agent thereof, or when no such officer resides in the county, to a director resident therein.

Second—If against a minor under the age of fourteen years by delivering a copy to such minor, and also to his father, mother or guardian, or if there be none within the county then to any person having the care or control of such minor, or with whom he resides, or in whose service he is.

Third—If against a person judicially declared to be of unsound mind, or incapable of conducting his own affairs, and for whom a guardian has been appointed, by delivering a copy to such guardian.

Fourth—In all other cases, by delivering a copy to the defendant personally, if he be found in the county, or if he be not found in the county by leaving a certified copy at his usual place of abode with a person over the age of fourteen years and explaining to such person the object of it.

Sections made applicable to justices' courts.

(1742.) SEC. 517. Sections thirty to thirty-five, both inclusive, of title three of this act are hereby made applicable to justices' courts, and proceedings therein—the word "justice" being inserted wherever the word "clerk" or "judge" occurs, and the word "constable" inserted wherever the words "Territorial marshal" or "sheriff" occur, and the word "complaint" whenever it occurs being stricken out and disregarded: *Provided*, that in actions upon contracts for the payment of money, the justice may, in his discretion, instead of ordering publication of summons, or the appointment of an attorney to appear for the defendant, order the service of the summons to be made by posting copies thereof in three public places in the precinct, within one day after the same is issued.

Proviso.

When order to arrest may be endorsed, etc.

(1743.) SEC. 518. An order to arrest the defendant may be endorsed on a summons issued by the justice, and the defendant may be arrested thereon by the sheriff, or constable, at the time of serving the summons, and brought before the justice, and there detained until duly discharged, in the following cases, arising after the passage of this act:

First—In an action for the recovery of money or damages on a cause of action arising upon a contract, express or implied, when the defendant is about to depart from the county or Territory, with the intent to defraud his creditors; or where the action is for the willful injury to the person, or for taking, detaining or injuring personal property.

Second—In an action for a fine or penalty, or for money or property embezzled, or fraudulently misapplied, or converted to his own use by an attorney, factor, broker, agent or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity.

Third—When the defendant has been guilty of a fraud in contracting the debt, or incurring the obligation for which the action is brought.

Fourth—When the defendant has removed, concealed or disposed of his property, or is about to do so, with intent to defraud his creditors.

Undertaking, etc.

(1744.) SEC. 519. Before an order of arrest shall be made, the party applying shall prove to the satisfaction of the justice, by the affidavit of himself or some other person, the facts on which the application is founded. The plaintiff shall also execute and deliver to the justice a written undertaking, with two or more sureties, to the effect that if the defendant recover judgment, the plaintiff will pay to him all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the arrest, not exceeding the sum specified in the undertaking, which shall be at least one hundred dollars.

When defendant may be taken before another justice.

(1745.) SEC. 520. The defendant, immediately upon being arrested, shall be taken to the office of the justice who made the order, and if he be absent or unable to try the action, or if it be made to appear to him, by the affidavit of the defendant, that he is a material witness in the action, the officer shall immediately take the defendant before a justice of that, or an adjoining precinct of the county, who shall take cognizance of the action, and proceed thereon as if the summons had been issued and the order of arrest made by him.

Duty of officer making arrest.

(1746.) SEC. 521. The officer making the arrest shall immediately give notice thereof to the plaintiff, or his attorney or agent, and endorse on the summons, and subscribe a certificate, stating the time of serving the same, the time of the arrest, and of his giving notice to the plaintiff.

Same.

(1747.) SEC. 522. The officer making the arrest shall keep the defendant in custody until duly discharged by order of the justice.

Defendant under arrest may demand immediate trial.

(1748.) SEC. 523. The defendant under arrest, on his appearance with the officer, may demand a trial immediately; and upon such demand being made, the trial shall not be delayed beyond twelve hours, except by the trial of another action pending at the time, or he may have an adjournment, and be discharged on giving bail, as provided in the next section. An adjournment at the request of the plaintiff, beyond twelve hours, shall discharge the defendant from arrest; but the action may proceed notwithstanding; and the defendant shall be subject to arrest, on the execution, in the same manner as if he had not been so discharged.

How defendant may obtain adjournment.

(1749.) SEC. 524. If the defendant, on his appearance, demand an adjournment, the same shall be granted, on condition that he execute, and file with the justice, an undertaking, with two or more sufficient sureties, to be approved by the justice, to the effect that he will render himself amenable to the process of the court during the pendency of the action, and such as may be issued, to enforce the judgment therein, or that the sureties will pay to the plaintiff the amount of any judgment which he may recover in the action. On filing the undertaking specified in this section, the justice shall order the defendant to be discharged from custody.

Sections applicable to justices' courts.

(1750.) SEC. 525. The following sections of chapter one, title five, of this act shall be applicable to justices' courts and proceedings therein, to wit: eighty to eighty-five, both inclusive; and the following of chapter two, same title, to wit: ninety-nine to one hundred and two, both inclusive; one hundred and four and one hundred and seven to one hundred and ten, both inclusive; the word "justice" being inserted in lieu of "clerk" or "judge" wherever they occur, and the word "constable" in lieu of the words "Territorial marshal" or "sheriff;" also sections one hundred and twenty-three to one hundred and forty-four, both inclusive; the word "justice" being inserted in lieu of that of "judge" and "clerk" whenever it may occur: *Provided*, that the writ of attachment shall be directed to the "sheriff" or any constable of any county of this Territory, and may be executed by the constable, and wherever the word "sheriff" occurs the word "constable" shall be deemed to be also inserted.

Proviso.

CHAPTER III.

PLEADINGS AND TRIAL.

SECTION.
1751. Pleadings defined.
1752. When to be in writing and verified; proviso.
1753. Oral to be entered, written to be filed.
1754. Complaint, what to state.
1755. Answer, what to contain.
1756. What deemed equivalent to denial.
1757. When the cause arises on instrument for payment of money.
1758. Instruments, genuineness to be admitted.
1759. Objections to pleadings.
1760. Variance.
1761. Amendments of pleadings.

SECTION.
1762. Title to real property, evidence not to be given.
1763. When action to be transferred; proviso.
1764. Adjournment of trial.
1765. Same.
1766. Same.
1767. When action may be dismissed.
1768. Trial by jury, when demanded; proceeding when jury trial demanded.
1769. Same.
1770. Same.
1771. Challenging jurors.

(1751.) SEC. 526. The pleadings in justices' courts shall be: Pleadings defined.

First—The complaint by the plaintiff, stating the cause of action.

Second—The answer by the defendant, stating the ground of the defense.

(1752.) SEC. 527. The pleadings shall be in writing, and verified by the oath of the party, his agent or attorney, when the action is: When to be in writing and verified.

First—For the foreclosure of any mortgage or the enforcement of any lien on personal property.

Second—Of actions for the possession of lands or tenements: *Provided, always*, that the amount claimed does not exceed one hundred dollars. Proviso.

(1753.) SEC. 528. When the pleadings are oral, the substance of them shall be entered by the justice in his docket; when in writing, they shall be filed in his office, and a reference made to them in the docket. Pleadings shall not be required to be in any particular form, but shall be such as to enable a person of common understanding to know what is intended. Oral to be entered, written to be filed.

(1754.) SEC. 529. The complaint shall state in a plain and direct manner the facts constituting the cause of action. Complaint, what to state.

(1755.) SEC. 530. The answer may contain a denial of Answer, what to contain.

any of the material facts stated in the complaint which the defendant believes to be untrue, and also a statement, in a plain and direct manner, of any other facts constituting a defense, or a counter claim upon which an action may be brought by the defendant against the plaintiff in a justice's court.

What deemed equivalent to denial.

(1756.) SEC. 531. A statement in answer that the party has not sufficient knowledge or information in respect to a particular allegation in the previous pleading of the adverse party, to form a belief, shall be deemed equivalent to a denial.

When the cause arises on instrument for payment of money.

(1757.) SEC. 532. When the cause of action or counter claim arises upon an account or instrument for the payment of money only, it shall be sufficient for the party to deliver a copy of the account or instrument to the court, and to state that there is due to him thereupon, from the adverse party, a specified sum, which he claims to recover or set off. The court may, at the time of the pleading, require that the original account or instrument be exhibited to the inspection of the adverse party, and a copy to be furnished, or if it be not so exhibited, and a copy so furnished, may prohibit its being afterwards given in evidence.

Instruments, genuineness to be admitted.

(1758.) SEC. 533. If the plaintiff annex to his complaint, or file with the justice at the time of issuing the summons, a copy of the promissory note, bill of exchange, or other written obligation for the payment of money, upon which the action is brought, the defendant shall be deemed to admit the genuineness of the signatures of the makers, endorsers or assignors thereof, unless he specifically deny the same in his answer, and verify the answer by his oath.

Objections to pleadings.

(1759.) SEC. 534. Either party may object to a pleading of his adversary, or to any part thereof, that it is not sufficiently explicit to enable him to understand it, or that it contains no cause of action or defense, although it be taken as true. If the court deem the objection well founded, it shall order the pleading to be amended, and if the party refuse to amend, the defective pleading shall be disregarded.

Variance.

(1760.) SEC. 535. A variance between the proof on the trial and the allegations in a pleading shall be disregarded as immaterial, unless the court be satisfied that the adverse party has been misled to his prejudice thereby.

Amendments of pleadings.

(1761.) SEC. 536. The pleadings may be amended at any time before the trial, to supply a deficiency or omission, when by such amendment substantial justice will be promoted. If the amendment be made after the issue, and it be made to appear to the satisfaction of the court, by oath, that an adjournment is necessary to the adverse party in consequence of such amendment, an adjournment shall be granted. The court may also, in its discretion require as a condition of an amendment, the payment of costs to the adverse party, to be fixed by the court, not exceeding ten dollars, but such payment shall not be required unless an adjournment is made necessary by the amendment, nor shall an amendment be allowed after a witness is sworn on the trial, when an adjournment thereby will be made necessary.

Title to real property, evidence not to be given.

(1762.) SEC. 537. The parties shall not be at liberty to give evidence upon any question which involves the title to, or the right of possession of real property or mining claims, or upon any question involving boundaries to land, or the legality of any tax, impost, assessment, toll or municipal fine, nor shall any issue presenting such question be tried by the justice; and if it appear from the plaintiff's own showing, on the trial, or from the answer of the defendant, verified by his oath, that the determination of the action will necessarily involve either of such questions, the justice shall suspend all further proceedings in the action, and certify the pleadings, or if the pleadings be oral, a transcript of the same from his docket to the probate court for the county, and from the time of filing such proceedings or transcript with the clerk of the probate court, such probate court shall have over the action the same jurisdiction as if it were originally commenced therein.

When action to be transferred.

(1763.) SEC. 538. If, at any time before the trial, it appear to the satisfaction of the justice before whom the action is brought, by affidavit of either party, that such justice is a material witness for either party, or if either party make affidavit that he has reason to believe, and does believe, that he cannot have a fair and impartial trial before such justice, by reason of the interest, prejudice or bias of the justice, on stating the facts upon which such belief is founded, the action shall be transferred to some other justice of the same or adjoining precinct, in the same county, and in case a jury be demanded, and affidavit of either party is made that he cannot have a fair and impartial trial, on account of the bias or prejudice of the citizens of the precinct against him, the action shall be transferred to some other justice of the peace in the county, but only one transfer shall be allowed to either party. The justice to whom an action may be transferred by the provisions of this section shall have and exercise the same jurisdiction over the action as if it had been originally commenced before him. The justice ordering the transfer of the action to another justice, shall immediately transmit to the latter, on payment by the applicant of all justices' and officers' costs unpaid and due from him, and the costs of making a copy of the docket for transmission, all the papers in the action, together with a certified transcript from his docket of the proceedings therein : *Provided*, that if the applicant fail to pay said costs for the space of three hours, the justice may vacate the order changing the place of trial, and proceed to try the cause as though such order had not been made. The justice to whom the case is transferred, shall issue a notice stating the time and place when and where the trial will take place ; which notice shall be served upon the parties by any officer authorized to serve process in a justice's court, or by any person specially appointed by the justice for that purpose, at least one day before the trial.

Proviso.

Adjournment of trial:

(1764.) SEC. 539. The trial may be adjourned by consent or upon application of either party, without the consent of the other, for a period not exceeding ten days (except as provided in the next section), as follows :

First—The party asking the adjournment shall, if required by his adversary, prove, by his own oath or otherwise, that he cannot, for want of material testimony which he expects to procure, safely proceed to trial, and shall show in what respect the testimony expected is material, and that he has used due diligence to procure it, and has been unable to do so.

Second—The party asking the adjournment shall also, if required by the adverse party; consent that the testimony of any witness of such adverse party, who is in attendance be then taken by deposition before the justice, which shall accordingly be done, and the testimony so taken may be read on the trial, with the same effect and subject to the same objections as if the witness were produced. But such objections shall be made at the time of taking the deposition.

Third—The court may also require the moving party to state upon affidavit the evidence which he expects to obtain, and if the adverse party thereupon admit that such evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the trial shall not be postponed.

(1765.) SEC. 540. An adjournment may be had either at the time of joining issue, or at any subsequent time to which the case may stand adjourned, on application of either party, for a period longer than ten days, but not to exceed four months from the time of the return day of the summons, upon proof, by the oath of the party or otherwise, to the satisfaction of the justice, that such party cannot be ready for trial before the time to which he desires an adjournment for want of material evidence, particularly describing it, and that the delay has not been made necessary by any act of negligence on his part since the action was commenced; that he has used due diligence to procure the evidence, and has been unable to do so, and that he expects to procure the evidence at the time stated by him: *Provided*, that if the adverse party admit that such evidence would be given, and consent that it may be considered as given on the trial, or offered or overruled as improper, the adjournment shall not be had. **Same.**

(1766.) SEC. 541. No adjournment shall be granted for a period longer than ten days, upon the application of either party, except upon condition that such party file an undertaking, with sureties, to be approved by the justice, to the effect that they will pay to the opposite party, the amount of any judgment that may be recovered against the party applying. **Same.**

(1767.) SEC. 542. If the plaintiff fail to appear at the return day of the summons, the action shall be dismissed. If the defendant fail to appear at the return day of the summons, or if either party fail to attend at a day to which the trial has been adjourned, or fail to make the necessary pleading or proof on his part, the case may nevertheless proceed at the request of the adverse party, and judgment shall be given in conformity with the pleadings and proofs. **When action may be dismissed.**

(1768.) SEC. 543. A trial by jury shall be demanded at the time of joining issue, and shall be deemed waived if neither party then demand it. When demanded, the trial of the case shall be adjourned until a time and place fixed for the return of the jury. If neither party desire an adjournment, the time and place shall be determined by the justice, and shall be on the same day or within the next two days. The jury shall be summoned upon an order of the **Trial by jury, when demanded.** **Proceedings when jury trial demanded.**

justice, from the citizens of the precinct, and not from the bystanders.

Same.

(1769.) SEC. 544. At the time appointed for the trial, the justice shall proceed to call from the jurors summoned, the names of the persons to constitute the jury for the trial of the issue. The jury, by consent of the parties, may consist of any number not more than six nor less than three.

Same.

(1770.) SEC. 545. If a sufficient number of competent and indifferent jurors do not attend, the justice shall direct others to be summoned from the vicinity, and not from the bystanders, sufficient to complete the jury.

Challenging jurors.

(1771.) SEC. 546. Either party may challenge the jurors. The challenges shall be either peremptory or for cause. Each party shall be entitled to three peremptory challenges. Either party may challenge for cause on any grounds set forth in section one hundred and sixty-three. Challenges for cause shall be tried by the justice in a summary manner, who may examine the juror challenged and witnesses.

CHAPTER IV.

JUDGMENT AND EXECUTION.

SECTION.
1772. Judgment of dismissal without prejudice, in what case entered.
1773. Judgment by default.
1774. Jury trial not demanded.
1775. Judgment, how and when entered, etc.
1776. When amount exceeds jurisdiction.
1777. When defendant offers to allow judgment for specified sum.
1778. Judgment when defendant is subject to arrest.
SECTION.
1779. Costs to be included in judgment; process on judgment how issued; lien.
1780. Transcript of judgment.
1781. Execution may issue.
1782. Form of execution.
1783. How executed; sections, etc., applicable to justices' courts; proviso.

Judgment of dismissal without prejudice in, what cases entered.

(1772.) SEC. 547. Judgment that the action be dismissed without prejudice to a new action, may be entered, with costs, in the following cases:

First—When the plaintiff voluntarily dismisses the action before it is finally submitted.

Second—When he fails to appear at the time specified in the summons, or upon adjournment, or within one hour thereafter.

Third—When it is objected at the trial, and appears by the evidence that the action is brought in the wrong county or precinct; but if the objection be taken and overruled, it shall be cause only of reversal on appeal, and shall not otherwise invalidate the judgment; if not taken at the trial, it shall be deemed waived, and shall not be a cause of reversal.

Judgment by default.

(1773.) SEC. 548. When the defendant fails to appear and answer, judgment shall be given for the plaintiff, as follows:

First—When a copy of the account, note, bill or other obligation upon which the action is brought, was filed with the justice at the time the summons was issued, judgment shall be given without further evidence, for the sum specified in the summons.

Second—In other cases the justice shall hear the evidence of the plaintiff and render judgment for such sum only as shall appear by the evidence to be just, but in no case exceeding the amount specified in the summons.

Jury trial not demanded.

(1774.) SEC. 549. Upon issue joined, if a jury trial be not demanded, the justice shall hear the evidence and decide all questions of fact and of law, and render judgment accordingly.

Judgment, how and when entered, etc.

(1775.) SEC. 550. Upon a verdict, the justice shall immediately render judgment accordingly. When the trial is by the justice, judgment shall be entered immediately after the close of the trial, if the defendant has been arrested and is still in custody; in other cases, it shall be entered within four days after the close of the trial. If the action be on contract against two or more defendants, and the summons is served on one or more, but not on all, the judgment shall be entered up only against those who were served or have voluntarily appeared, if the contract be a several, or a joint and several contract; but if the contract be a joint contract only, the judgment shall be entered up against all the defendants, but shall only be enforced against the joint property of all, and the individual property of the defendants served, or who have voluntarily appeared in the action. In an action on a contract, or obligation for the direct payment of money, judgment for the plaintiff, whether the same be by default, or after verdict or decision of the court, shall follow the contract or obligation.

When amount exceeds jurisdiction.

(1776.) SEC. 551. When the amount found due to either party exceeds the sum for which the justice is authorized to enter judgment, such party may remit the excess, and judgment may be rendered for the residue.

When defendant offers to allow judgment for specified sum.

(1777.) SEC. 552. If the defendant, at any time before the trial, offer in writing to allow judgment to be taken against him for a specified sum, the plaintiff may immediately have judgment therefor, with the costs then accrued; but if he do not accept such offer before the trial, and fail to recover in the action a sum equal to the offer, he shall not recover costs, but costs shall be adjudged against him, and if he recover, be deducted from his recovery. But the offer, and failure to accept it, shall not be given in evidence to affect the recovery otherwise than as to costs as above provided.

Judgment when defendant is subject to arrest.

(1778.) SEC. 553. When a judgment is rendered in a case, where the defendant is subject to arrest and imprisonment thereon, it shall be so stated in the judgment and entered in the docket.

Costs to be included in judgment.

(1779.) SEC. 554. When the prevailing party is entitled to costs by this chapter, the justice shall add their amount to the verdict, or in case of a failure of the plaintiff to recover, or in case of a dismissal of the action, shall enter up judgment in favor of defendant for the amount of such costs.

Transcript of judgment.

(1780.) SEC. 555. The justice, on demand of the party in whose favor judgment is rendered, shall give him a transcript thereof, which may be filed and docketed in the office of the clerk of the district court of the district in which the county is situated, where the judgment was rendered. The time of the receipt of the transcript by the clerk shall be noted by him thereon, and entered in the docket, and from that time execution may be issued by the clerk on such judgments to the sheriff of any other county of the Territory in the same manner as upon judgments recovered in the higher courts. All process upon judgments recovered in justices' courts, to be executed within the same county shall be issued by the justice or his successors in office. No judgment rendered by a justice of the peace shall create any lien upon any lands of the defendant, unless a transcript of such judgment certified by the justice be filed and recorded in the office of the county recorder. When such transcript is to be filed in any other county than that in which the justice resides, such transcript shall be accompanied with the certificate of the county clerk as to the official character of the justice. When so filed and recorded in the office of the recorder for any county, such judgment shall constitute a lien upon, and bind the lands and tenements of the judgment debtor, situated in the county where such transcript may be filed and recorded in favor of such judgment creditor as if such judgment had been rendered in the district court of the district in which such county is situated.

Execution may issue.

(1781.) SEC. 556. Execution for the enforcement of a judgment in a justice's court, may be issued on the application of the party entitled thereto, at any time within three years from the entry of judgment.

Form of execution.

(1782.) SEC. 557. The execution when issued by a justice, shall be directed to the sheriff, or to a constable of the county, and subscribed by the justice by whom the judgment was rendered, or by his successor in office. It shall intelligibly refer to the judgment, by stating the names of the parties, and the name of the justice before whom, and of the county and precinct where, and the time when it was rendered, the amount of judgment, if it be for money, and if less than the whole is due, the true amount due thereon. It shall contain, in like cases, similar directions to the sheriff, or constable, as are required by the provisions of title seven of this act, in an execution to the Territorial marshal, or sheriff.

How executed.

(1783.) SEC. 558. The sheriff, or constable, to whom the execution is directed shall proceed to execute the same in the same manner as the Territorial marshal, or sheriff, is required, by the provisions of title seven of this act, to proceed upon executions directed to him; and the constable, when the execution is directed to him, shall be vested for that purpose with all the powers of the Territorial marshal, or sheriff. And sections two hundred and twelve, two hundred and thirteen, and from two hundred and fifteen to two hnndred and thirty-four, both inclusive, and two hundred and thirty-six, and two hundred and thirty-seven of chapter one, said title, and chapter two, of the same title, are hereby made applicable to justices' courts and proceedings therein, the word "justice" being inserted in lieu of the words "judge" and "clerk," whenever they occur, and a constable to whom, and his successor in office, the writ is given, shall have all the powers and be subject to all the duties and liabilities therein given to or imposed

Sections, etc., applicable to justices' courts.

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upon the Territorial marshal, or sheriff: *Provided,* that the words "in an amount exceeding fifty dollars," in section two hundred and forty-one shall be deemed omitted.

CHAPTER V.

GENERAL PROVISIONS.

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Provisions applicable to justices' courts.

(1784.) SEC. 559. Those provisions of this act which are referred to in this title and no other, shall, in addition to the provisions embraced in this title, be applicable to justices' courts and proceedings therein.

Docket, how kept.

(1785.) SEC. 560. Every justice shall keep a book denominated a "docket," in which he shall enter:

First—The title of every action or proceeding.

Second—The object of the action or proceeding; and if a sum of money be claimed, the amount of the demand.

Third—The date of the summons and the time of its return; and if an order to arrest the defendant be made, or a writ of attachment be issued, a statement of these facts.

Fourth—The time when the parties, or either of them appear, or their non-appearance, if default be made; a minute of the pleadings and motions, if in writing, referring to them, if not in writing, a concise statement of the material parts of the pleading, and of all motions made during the trial by either party, and his decisions thereon.

Fifth—Every adjournment, stating on whose application, whether on oath, evidence or consent, and to what time.

Sixth—The demand for a trial by jury, when the same is made, and by whom made, the order for the jury, and the time appointed for the trial and the return of the jury.

Seventh—The names of the jury who appear and are sworn, the names of all witnesses sworn, at whose request.

Eighth—The verdict of the jury, and when received. If the jury disagree, and are discharged, the fact of such disagreement and discharge.

Ninth—The judgment of the court, specifying the costs included, and the time when rendered.

Tenth—The issuing of the execution, when issued, and to whom; the renewals thereof, if any, and when made, and a statement of any money paid to the justice, and when and by whom.

Eleventh—The receipt of a notice of appeal, if any be given, and of the appeal bond, if any be filed, and of the making and delivery of a transcript of his judgment or docket.

Same; entries to be evidence

(1786.) SEC. 561. The several particulars of the last section specified, shall be entered under the title of the action to which they relate, and at the time when they occur. Such entries in a justice's docket, or a transcript thereof, certified by the justice, or his successor in office, shall be primary evidence to prove the facts so stated therein.

Index to

(1787.) SEC. 562. A justice shall keep an alphabetical index to his docket, in which shall be entered the names of the parties to each judgment, with a reference to the page of entry. The names of the plaintiffs shall be entered in the index, in the alphabetical order of the first letter of the family names.

To be deposited with successor.

(1788.) SEC. 563. It shall be the duty of every justice, upon the expiration of his term of office, to deposit with his successor his official dockets, as well his own as those of his predecessors, which may be in his custody, to keep as public records. If the office of a justice become vacant by his death, or removal from the precinct, or otherwise, before his successor is elected and qualified, the dockets in possession of such justice shall be deposited with the county clerk of the county, to be by him delivered to the successor in office of the justice.

Any justice may issue executions.

(1789.) SEC. 564. Any justice with whom the docket of his predecessors is deposited, may issue execution or other process, upon a judgment there entered and unsatisfied, in the same manner and with the same effect as the justice by whom the judgment was entered might have done. In case of the creation of a new county, or the change of the boundary between two counties, any justice into whose hands the docket of a justice formerly acting as such within the same Territory may come, shall for the purposes of this section be considered the successor of said former justice.

Who deemed successor.

(1790.) SEC. 565. The justice elected or appointed to fill a vacancy, shall be deemed the successor of the justice whose office became vacant before the expiration of a full term. When the full term expires, the same or another person elected to take the office in the same precinct, from that time shall be deemed the successor.

Same.

(1791.) SEC. 566. When two or more justices are equally entitled, under the last section, to be deemed the successors in office of a justice, the judge of the probate court for the county shall, by a certificate subscribed by him and filed in the office of the county clerk, designate which justice shall be the successor of a justice going out of office, or whose office has become vacant.

Papers, how filled up.

(1792.) SEC. 567. The summons, execution, and every other paper made or issued by a justice, except a *subpœna*, shall be filled up without a blank left to be filled by another, otherwise it shall be void.

Sickness of justice, etc.

(1793.) SEC. 568. In case of the sickness, or other disability, or necessary absence of a justice on a return day of a summons, or at the time appointed for a trial, another justice of the same county or an adjoining precinct of the county may, at his request, attend in his behalf, and shall thereupon become vested with the power for the time being, of the justice before whom the summons was returnable. In that case, the proper entry of the proceedings before the attending justice, subscribed by him, shall be made in the docket of the justice before whom the summons was returnable. If the case be adjourned, the justice, before whom the summons was returnable, may resume jurisdiction.

Special deputation to serve papers.

(1794.) SEC. 569. The justice may, at the request of the party, and on being satisfied that it is expedient, specially depute any discreet person of suitable age, and not interested in the action, to serve a summons or execution with or without an order to arrest the defendant, or with or without a writ of attachment. The said justice shall be liable on his official bond for all official acts of the person so deputed. Such deputation shall be in writing on the process.

Authority of the deputation.

(1795.) SEC. 570. The person deputed shall have the authority of a constable in relation to the service, execution and return of such process, and shall be subject to the same obligations.

Constable to complete execution of process.

(1796.) SEC. 571. A constable, notwithstanding the expiration of his term of office, may proceed and complete the execution of all final process, which he has begun to execute, in the same manner as if he still continued in office, and his sureties shall be liable to the same extent.

Contempt, what acts to constitute.

(1797.) SEC. 572. A justice may punish as for contempt persons guilty of the following acts, and no other:

First—Disorderly, contemptuous, or insolent behavior toward the justice while holding the court, tending to interrupt the due course of a trial or other judicial proceeding.

Second—A breach of the peace, boisterous conduct, or violent disturbance in the presence of the justice or in the immediate vicinity of the court held by him, tending to interrupt the due course of trial or other judicial proceedings.

Third—Disobedience or resistance to the execution of a lawful order or process, made or issued by him.

Fourth—Disobedience to a *subpœna* duly served, or refusing to be sworn or answer as a witness.

Fifth—Rescuing any person or property in the custody of an officer by virtue of an order or process of the court held by him.

When and how punished

(1798.) SEC. 573. When a contempt is committed in the immediate view and presence of the justice, it may be punished summarily, for which an order shall be made reciting the facts, as occurring in such immediate view and presence, adjudging that the person proceeded against is thereby guilty of a contempt, and that he be punished as therein prescribed. When the contempt is not committed in the immediate view and presence of the justice, a warrant of arrest may be issued by such justice, on which the person so guilty may be arrested and brought before the justice immediately, when an opportunity to be heard in his defense or excuse shall be given. The justice may thereupon discharge him, or may convict him of the offense. A justice may punish for contempts by fine or imprisonment, or both; such a fine not to exceed in any case fifty dollars, and such imprisonment one day.

Conviction, how entered.

(1799.) SEC. 574. The conviction, specifying particularly the offense and the judgment thereon, shall be entered by the justice in his docket.

Subpœnas.

(1800.) SEC. 575. Justices of the peace may issue *subpœnas* in any action or proceeding in the courts held by them, and final process on any judgment recovered therein, to any part of the county. A justice of the peace may issue a summons to any person a resident of his precinct, to appear before him at his office to act as interpreter in any action or proceeding in his court. Such summons shall be served and returned in like manner as a *subpœna* issued by a justice. Any person so summoned shall, for a failure to attend at the time and place named in the summons, be deemed guilty of a contempt, and may be punished accordingly.

Summons.

Commissions to take depositions.

(1801.) SEC. 576. Justices of the peace may issue commissions to take the depositions of witnesses out of this Territory, and settle interrogatories to be annexed thereto, and direct the manner in which the commissions shall be returned. The provisions of title eleven of this act, so far as the same are consistent with the jurisdiction and powers of justices' courts, shall be applicable to justices' courts, and to actions and proceedings therein, the word "justice" being deemed inserted in lieu of "clerk" and "judge" wherever the same occur.

New trial, for what causes granted.

(1802.) SEC. 577. A new trial may be granted by the justice, on motion, within ten days after the entry of judgment, for any of the following causes:

First—Accident or surprise, which ordinary prudence could not have guarded against.

Second—Excessive damages, appearing to have been given under the influence of passion.

Third—Insufficiency of the evidence to justify the verdict or other decision.

Fourth—Newly discovered evidence material for the party making the application, which he could not with reasonable diligence have discovered and produced at the time.

Application.

(1803.) SEC. 578. The application shall be made upon affidavit and notice. The affidavit shall be filed with the justice, with a statement of the grounds upon which the party intends to rely. The adverse party may use counter affidavits on the motion, provided they be filed one day previous to the hearing of the motion.

Appeal, how taken.

(1804.) SEC. 579. Any party dissatisfied with a judgment rendered in a justice's court, may appeal therefrom to the probate court for the county, any time within thirty days after the rendition of judgment: *Provided*, that no appeal shall be taken for a sum less than twenty dollars. The appeal shall be taken by filing a notice thereof with the justice, and serving a copy on the adverse party.

Cause to be tried anew.

(1805.) SEC. 580. All causes appealed to the probate court shall be tried anew in said court, and said court may regulate by rule the practice in such cases, in all respects not provided for by statute.

Justice required to transmit copy of docket, etc.

(1806.) SEC. 581. Upon receiving the notice of appeal, and on payment of the fees of the justice, and filing an undertaking as required in the next section, the justice shall, within five days, transmit to the clerk of the probate court a certified copy of his docket, the pleadings, all notices, motions and other papers filed in the cause, the notice of appeal and undertaking filed; and the justice may be compelled by the probate court, by an order entered upon motion, to transmit such papers, and may be fined for neglect or refusal to transmit the same. A certified copy of such order may be served on the justice, by the party or his attorney. In the probate court, either party shall have the benefit of all legal objections made in the justice's court.

Appeal made effectual by filing undertaking, etc.

(1807.) SEC. 582. An appeal from a justice's court shall not be effectual for any purpose, unless an undertaking be filed, within five days after filing the notice of appeal, with two or more sureties, in the sum of one hundred dollars, for the payment of the costs on the appeal, or if a stay of proceedings be claimed, in a sum equal to twice the amount of the judgment, including costs, when the judgment is for the payment of money, or twice the value of the property, including costs, when the judgment is for the recovery of specific personal property, and shall be to the effect, when the action is for the recovery of money, that the appellant will pay the amount of the judgment appealed from, and all costs if the appeal be withdrawn or dismissed, or the amount of any judgment, and all costs that may be recovered against him in said action in the probate court. When the action is for the recovery of specific personal property, the undertaking shall be to the effect that the appellant will pay the judgment and costs appealed from, and obey the order of the court made therein, if the appeal be withdrawn and dismissed, or will pay the amount of any judgment or costs which may be recovered against him in said action in the probate court, and will obey any order made by the court therein. The undertaking shall be accompanied by the affidavits of the sureties that they are residents of the county, and are each worth the amount specified in the undertaking, over and above all their just debts and liabilities, exclusive of property exempt from execution. The adverse party may, however, except to the sufficiency of the sureties, within two days after the filing of the undertaking, and unless they and other sureties justify before the justice from whose court the appeal is taken, within two days thereafter, upon notice to the adverse party, the appeal shall be regarded as if no undertaking had been given. A deposit of the amount of the judgment appealed from, including all costs, or of the value of the property and all costs, in actions for the recovery of specific personal property, with the justice, shall be equivalent to the filing of the undertaking in this section mentioned; and in such cases the justice shall transmit the money to the clerk of the court, to be by him paid out on the order of the court.

Adverse party may except.

Staying of proceedings.

(1808.) SEC. 583. If an execution be issued on the filing of the undertaking, staying all proceedings, the justice shall, by order, direct the officer to stay all proceedings on the same. Such officer shall, upon payment of his fees for services rendered on the execution, thereupon relinquish all property levied upon, and deliver the same to the judgment debtor, together with all moneys collected from sales or otherwise. If his fees be not paid, the officer may retain so much of the property or proceeds thereof, as may be necessary to pay the same.

Costs.

(1809.) SEC. 584. Costs in the action shall be allowed to the prevailing party in a justice's court. The party in whose favor a judgment is rendered, and who claims his costs, shall file with the justice, within two days after the verdict or decision of the court, a memorandum of the items of his costs in the action or proceeding, which shall be verified as prescribed in section four hundred and eighty-four.

Justices required to receive money and pay over.

(1810.) SEC. 585. Justices of the peace shall receive from the sheriff, or constables of their county, all moneys collected on any process or order issued by their courts respectively, and all moneys paid to them in their official capacity, and shall pay the same over to the parties entitled to receive them, without delay. For a violation of this section they may be removed from office, and shall be deemed guilty of a misdemeanor.

Deposit of money, etc., for costs.

(1811.) SEC. 586. Justices of the peace may, in all cases, require a deposit of money, or an undertaking, as security for costs of court, before issuing a summons.

Provisions applicable to justices' courts.

(1812.) SEC. 587. The provisions of chapter one, title ten, and sections four hundred and ninety-three to five hundred and one, both inclusive, and five hundred and four to five hundred and six, both inclusive, title fifteen of this act, and the miscellaneous provisions of title seventeen, shall be applicable to justices' courts and actions therein, the word "justice" being deemed inserted in lieu of the word "clerk," wherever it occurs.

TITLE XVII.

MISCELLANEOUS PROVISIONS.

SECTION.
1813. Rules of court, how made.
1814. Actions against officers, etc.
1815. Terms explained.
1816. Sureties required to make affidavit.
1817. Writs of certiorari, etc., by whom issued.
1818. Sale of property under writ of attachment.
1819. Certified copies of papers, etc., to be evidence.
1820. Co-partners, when summoned in common name.
SECTION.
1821. Substitution of real party defendant.
1822. Intervention, when allowed.
1823. Who may intervene.
1824. How and what to set forth.
1825. Court to determine.
1826. Action to obtain discovery, etc., allowed.
1827. Sureties to be examined under oath.
1828. Repeal of law.
1829. How construed.
1830. Acts repealed.

Rules of court how made.

(1813.) SEC. 588. The supreme court may make rules not inconsistent with the organic act and laws of the Territory, for its own government and the government of the district court; but such rules shall not be in force until thirty days after their adoption and publication.

Actions against officers, etc.

(1814.) SEC. 589. If an action be brought against a Territorial marshal, or a sheriff, for an act done by virtue of his office, and he give written notice thereon to the sureties on any bond of indemnity received by him, the judgment recovered therein shall be conclusive evidence of his right to recover against such sureties, and the court, or judge in vacation may, on motion, upon notice of five days, order judgment to be entered up against them for the amount so recovered, including costs.

Terms explained.

(1815.) SEC. 590. Words used in this act in the present tense, shall be deemed to include the future as well as the present; words used in the singular number shall be deemed to include the plural, and the plural the singular; words used in one gender may include either; writing shall be deemed to include printing or printed paper; oath to include affirmation or declaration; signature or subscription to include mark when the person cannot write, his name being written near it, and witnessed by a person who writes his own name as witness; the words "real estate" or "real property," to include mining claims; joint authority, given to three or more persons, is given to the majority, unless restricted. Whenever the word Territory is used, it shall be held to include and apply to the District of Columbia. (1)

Sureties required to make affidavit.

(1816.) SEC. 591. In all cases where an undertaking with sureties is required by the provisions of this act, the judge, justice, or clerk, or other officer taking the same, shall, unless it is otherwise provided in said act, require the sureties to accompany the same with an affidavit that they are each worth the sum specified in the undertaking, over and above all their just debts and liabilities, exclusive of property exempt from execution: *Provided*, that when the amount specified in an undertaking exceeds three thousand dollars, and there are more than two sureties thereon, they may state in their affidavits that they are severally worth amounts less than that expressed in the undertaking, if the whole amount be equivalent to that of two sufficient sureties.

Writs of certiorari, etc., by whom issued.

(1817.) SEC. 592. Writs of *certiorari* and *mandamus* may be issued in the cases prescribed by this act, by judges of the courts in term time or in vacation, and may, in the discretion of the judge issuing the writ, be made returnable, and the hearing may be had on the return thereof in vacation.

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1) See sec. (5.)

(1818.) SEC. 593. Whenever property has been taken by an officer under a writ of attachment in pursuance of the provisions of this act, and it shall be made to appear satisfactorily to the court, or a judge thereof, that the interests of the parties to the action will be sustained by the sale thereof, the court, or judge, may order such property to be sold, in the same manner as property is sold under an execution, and the proceeds to be deposited in court to abide the judgment in the action. Such order shall be made only upon notice to the adverse party, or his attorney, in case such party has been personally served with a summons in the action.

Sale of property under writ of attachment.

(1819.) SEC. 594. A copy of any record, document or paper in the custody of a public officer of this Territory, or of the United States, within this Territory, certified under the official seal, or verified by the oath of such officer, to be a true, full and correct copy of the original in his custody, may be read in evidence in any action or proceeding in the courts of this Territory, in like manner, and with the like effect, as the original could be if produced.

Certified copies of papers, etc., to be evidence.

(1820.) SEC. 595. When two or more persons, associated in any business, transact such business under a common name whether it comprises the names of such persons or not, the associates may be sued by such common name, the summons in such cases being served on one or more of the associates, but the judgment in such cases shall bind only the joint property of the associates.

Co-partners, when summoned in common name.

(1821.) SEC. 596. A defendant against whom an action is pending upon a contract, or for specific personal property, may at any time before answer, upon affidavit that a person, not a party to the action, makes upon him, and without any collusion with him, a demand upon the same contract, or for the same property, upon due notice to such person, and the adverse party, apply to the court for an order to substitute such person in his place and discharge him from liability to either party, on his depositing in court the amount claimed on the contract, or delivering the property, or its value, to such person as the court may direct, and the court may, in its discretion, make the order.

Substitution of real party defendant.

(1822.) SEC. 597. Any person shall be entitled to intervene in an action who has an interest in the matter in litigation, in the success of either of the parties to the action, or an interest against both. An intervention takes place when a third person is permitted to become a party to an

Intervention, when allowed

action between other persons, either by joining the plaintiff, in claiming what is sought by the complaint, or by uniting with the defendant in resisting the claims of the plaintiff, or by demanding anything adversely to both the plaintiff and the defendant.

Who may intervene. (1823.) SEC. 598. A third person may intervene either before or after issue has been joined in the cause.

How and what to set forth. (1824.) SEC. 599. The intervention shall be by petition or complaint filed in the court in which the action is pending; and it must set forth the grounds on which the intervention rests. A copy of the petition or complaint shall be served upon the party or parties to the action, against whom anything is demanded, who shall answer as if it were an original complaint in the action.

Court to determine. (1825.) SEC. 600. The court shall determine upon the intervention at the same time that the action is decided; if the claim of the party intervening is not sustained, he shall pay all costs incurred by the intervention.

Action to obtain discovery, etc., allowed. (1826.) SEC. 601. No action to obtain a discovery under oath, in aid of the prosecution or defense of another action or proceeding, shall be allowed.

Sureties may be examined under oath (1827.) SEC. 602. In all cases, not otherwise provided for in this act, where sureties are required to justify, they shall appear before the officer or person, authorized to take the justification, and may be examined under oath by such officer or person, and the adverse party touching their qualifications as sureties, which examination shall be reduced to writing and subscribed by the sureties if required. If, upon such examination, it shall appear to such officer or person that said sureties, or either of them, have the necessary qualifications of such, he shall so endorse upon the statement, and cause the same to be filed, and thereupon the justification shall be complete.

Repeal of law. (1828.) SEC. 603. The repeal of a law does not revive one previously repealed by it, nor affect any rights, duties, or penalties which have arisen under it. (1)

How construed. (1829.) SEC. 604. Laws and parts thereof, and words and phrases, shall be construed in accordance with the customary usage of the language.

Acts repealed. (1830.) SEC. 605. "An act in relation to abatement in civil actions, approved January sixteenth, eighteen hundred and sixty-one," "An act containing provisions applicable to the laws of the Territory of Utah, approved January fourteenth, eighteen hundred and fifty-four;" "An act supplementary to the act regulating the mode of procedure in civil cases in the courts of the Territory of Utah," approved December thirtieth, eighteen hundred and fifty-two, approved February nineteenth, eighteen hundred and sixty-nine; are hereby repealed; and so much of "An act providing for appeals to the supreme court," approved January eigteenth, eighteen hundred and sixty-one, and "An act governing writs of attachments and garnishments," approved January twentieth, eighteen hundred and sixty-five; and "An act regulating the mode of procedure in civil cases in the courts of the Territory of Utah," approved December thirtieth, eighteen hundred and fifty-two; and "An act declaring certain things to be property specifying the owner thereof, defining the mode for recovering its possession, and providing for redress of any grievance that may arise from proceedings under this act," approved January twentieth, eighteen hundred and sixty; and "An act authorizing the issuing of executions against judgment debtors, non-residents of the county," approved January nineteeth, eighteen hundred and sixty-four; and "An act in relation to the judiciary," approved January nineteenth, eighteen hundred and fifty-five; and "An act in relation to justices of the peace," approved February fourth, eighteen hundred and fifty-two; and "An act authorizing the governor to appoint commissioners to take acknowledgment of deeds or other contracts and affidavits and depositions in the States and other Territories of the United States;" approved February eighteenth, eighteen hundred and sixty-eight, as conflict with the provisions of this act, are hereby repealed.

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(1) See sec. (4.)

TITLE XXI.

PENAL CODE.

PRELIMINARY PROVISIONS.

SECTION.
1831. Penal code.
1832. When this act takes effect.
1833. Not retroactive.
1834. Construction of the penal code.
1835. Effect of the code upon past offenses.
1836. Certain terms defined in the senses in which they are used in this code.
1837. What intent to defraud is sufficient.
1838. Civil remedies preserved.
1839. Authority of courts martial preserved. Courts of justice to punish for contempts.
1840. Of sections declaring crimes punishable; duty of court.
1841. Punishments, how determined.
1842. Witness' testimony may be read against him on prosecution for perjury.
1843. "Crime" and "public offense" defined.
1844. Crimes, how divided.
1845. "Felony" and "misdemeanor" defined.
1846. Punishment of felony, when not otherwise prescribed.
1847. Punishment of misdemeanor, when not otherwise prescribed.
1848. To constitute crime, there must be unity of act and intent.
1849. Intent, how manifested, and who considered of sound mind.
1850. Drunkenness no excuse for crime; when it may be considered.
1851. This act, how cited.

An Act to establish a penal code.

[*Approved February* 18, 1876.]

Penal code.

(1831.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That this act shall be known as

THE PENAL CODE OF UTAH.

When this act takes effect.

(1832.) SEC. 2. This code takes effect at twelve o'clock, noon, on the fourth day of March, eighteen hundred and seventy-six.

Not retroactive.

(1833.) SEC. 3. No part of it is retroactive unless expressly so declared.

Construction of the penal code.

(1834.) SEC. 4. The rule of the common law that penal statutes are to be strictly construed has no application to this code; all its provisions are to be construed according to the fair import of their terms, with a view to effect its objects and to promote justice.

Effect of code upon past offenses.

(1835.) SEC. 5. No act or omission, commenced after twelve o'clock noon of the day on which this code takes effect as a law, is criminal or punishable, except as prescribed or authorized by this code, or by some of the statutes then in force; or by some ordinance, county, city, or precinct regulation, passed or adopted under such statutes and in force when this code takes effect; any act or omission commenced prior to that time may be enquired of, prosecuted and punished in the same manner as if this code had not been passed.

Certain terms defined in the senses in which they are used in this code.

(1836.) SEC. 6. Whenever the terms mentioned in this section are employed in the penal code, they are employed in the senses hereafter affixed to them, except where a different sense plainly appears—

First—The term "willfully," when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act or make the omission referred to. It does not require any intent to violate law, or to injure another, or to acquire any advantage;

Second—The terms "neglect," "negligence," "negligent" and "negligently," impart a want of such attention to the nature or probable consequences of the act or omission as a prudent man ordinarily bestows in acting in his own concerns;

Third—The term "corruptly" imparts a wrongful design to acquire or cause some pecuniary or other advantage to the person guilty of the act or omission referred to, or to some other person;

Fourth—The terms "malice" and "maliciously" impart a wish to vex, annoy, or injure another person, established either by proof or presumption of law.

Fifth—The term "knowingly" imparts only a knowledge that the facts exist which bring the act or omission within the provisions of the code. It does not require any knowledge of the unlawfulness of such act or omission;

Sixth—The term "bribe" signifies any money, goods, right in action, property, thing of value or advantage, present or prospective, or any promise or undertaking to give any, asked, given or accepted, with a corrupt intent to influence, unlawfully, the person to whom it is given in his action, vote, or opinion in any public or official capacity;

Seventh—The word "vessel" when used with reference to shipping, includes steamboats, canal boats, and every structure adopted to be navigated from place to place;

Eighth—The term "signature" includes any name, mark, or sign written with intent to authenticate any instrument or writing;

Ninth—The term "writing" includes both printing and writing;

Tenth—The term "land" and the phrases "real estate" and "real property," include lands, tenements and hereditaments, and all rights thereto and interest therein;

Eleventh—The term "personal property" includes every description of money, goods, chattels, effects, evidences of rights in action, and all written instruments by which any pecuniary obligation, right or title to property is created, acknowledged, transferred, increased, defeated, discharged or diminished and every right or interest therein;

Twelfth—The word "property" includes personal and real property;

Thirteenth—The word "month" means a calendar month unless otherwise expressed, and the word "year" and also the abbreviation "A. D." is equivalent to the expression "year of our Lord;"

Fourteenth—The word "oath" includes "affirmation" in all cases where an affirmation may be substituted for an oath; and in like cases the word "swear" includes the word "affirm." Every mode of oral statement under oath or affirmation is embraced in the term "testify," and every written one, in the term "depose;"

Fifteenth—When the seal of a court or public officer or officers is required by law to be affixed to any paper, the word "seal" includes an impression of such seal upon the paper alone, as well as upon wax or a wafer affixed thereto;

Sixteenth—The word "State," when applied to the different parts of the United States, includes the District of Columbia and the Territories, and the words "United States" may include the District and Territories;

Seventeenth—Where the term "person" is used in this code to designate the party whose property may be the subject of any offense, it includes this Territory, any State, government or country which may lawfully own any property within this Territory, and all public and private corporations or joint associations, as well as individuals;

Eighteenth—The word "person" includes bodies politic and corporate;

Nineteenth—The singular number includes the plural, and the plural the singular;

Twentieth—Words used in the masculine gender comprehend, as well, the feminine and neuter;

Twenty-first—Words used in the present tense include the future, but exclude the past;

Twenty-second—The word "will" includes codicils.

Twenty-third—Words and phrases must be construed according to the context and the approved usage of the language; but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in law, must be construed according to such peculiar and appropriate meaning;

Twenty-fourth—Words giving a joint authority to three or more public officers or other persons, are construed as giving such authority to a majority of them, unless it be otherwise expressed in the act giving the authority.

What intent to defraud is sufficient.

(1837.) SEC. 7. Whenever, by any of the provisions of this code, an intent to defraud is required in order to constitute any offense, it is sufficient if an intent appears to defraud any person, association or body politic or corporate whatever.

Civil remedies preserved.

(1838.) SEC. 8. The omission to specify or affirm in this code any liability to damages, penalty, forfeiture, or other remedy imposed by law and allowed to be recovered or enforced in any civil action or proceeding, for any act or omission declared punishable herein, does not effect any right to recover or enforce the same.

Authority of courts martial preserved.

(1839.) SEC. 9. This code does not affect any power conferred by law upon any court martial or other military authority or officer, to impose or inflict punishment upon offenders; nor any power conferred by law upon any public body, tribunal, or officer, to impose or inflict punishment for a contempt.

Of sections declaring crimes punishable; duty of court.

(1840.) SEC. 10. The several sections of this code which declare certain crimes to be punishable as therein mentioned devolve a duty upon the court authorized to pass sentence, to determine and impose the punishment prescribed.

Punishments, how determined.

(1841.) SEC. 11. Whenever in this code the punishment for a crime is left undetermined between certain limits, the punishment to be inflicted in a particular case must be determined by the court authorized to pass sentence, within such limits as may be prescribed by this code.

Witness' testimony may be read against him on prosecution for perjury.

(1842.) SEC. 12. The various sections of this code which declare that evidence obtained upon the examination of a person as a witness cannot be received against him in any criminal proceeding, do not forbid such evidence being proved against such person upon any proceedings founded upon a charge of perjury committed in such examination.

Crime and public offense defined.

(1843.) SEC. 13. A crime or public offense is an act committed or omitted in violation of a law forbidding or commanding it, and to which is annexed, upon conviction, either of the following punishments:

First—Death;

Second—Imprisonment;

Third—Fine;

Fourth—Removal from office; or,

Fifth—Disqualification to hold and enjoy any office of honor, trust or profit in this Territory.

Crimes, how divided.

(1844.) SEC. 14. Crimes are divided into:

First—Felonies; and,

Second—Misdemeanors.

Felony and misdemeanor defined.

(1845.) SEC. 15. A felony is a crime which is, or may be punishable with death, or by imprisonment in the penitentiary. Every other crime is a misdemeanor.

Punishment of felony when not otherwise prescribed.

(1846.) SEC. 16. Except in cases where a different punishment is prescribed by this code, every offense declared to be a felony is punishable by imprisonment in the penitentiary not exceeding five years.

Punishment of misdemeanor when not otherwise prescribed.

(1847.) SEC. 17. Except in cases where a different punishment is prescribed by this code, every offense declared to be a misdemeanor is punishable by imprisonment in a county jail not exceeding six months; or by a fine not exceeding three hundred dollars, or by both.

To constitute crime there must be unity of act and intent.

(1848.) SEC. 18. In every crime or public offense there must exist a union, or joint operation of act and intent, or criminal negligence.

Intent, how manifested and who considered of sound mind.

(1849.) SEC. 19. The intent or intention is manifested by the circumstances connected with the offense, and the sound mind and discretion of the accused. All persons are of sound mind who are neither idiots nor lunatics, nor affected with insanity.

Drunkeness no excuse for crime.

(1850.) SEC. 20. No act committed by a person while in a state of voluntary intoxication is less criminal by reason of his having been in such condition. But whenever the actual existence of any particular purpose, motive, or intent is a necessary element to constitute any particular species or degree of crime, the jury may take into consideration the fact that the accused was intoxicated at the time, in determining the purpose, motive or intent with which he committed the act. When it may be considered.

(1851.) SEC. 21. This act whenever cited, enumerated, referred to or amended, may be designated simply as the penal code, adding when necessary the number of the section. This act how cited.

TITLE I.

OF CRIMES AND PUNISHMENTS.

SECTION.	SECTION.
1852. Who are capable of committing crimes.	1853. Who are liable to punishment.

(1852.) SEC. 22. All persons are capable of committing crimes, except those belonging to the following classes: Who are capable of committing crimes.

First—Children under the age of seven years;

Second—Children between the ages of seven and fourteen years in the absence of clear proof that at the time of committing the act charged against them they knew its wrongfulness.

Third—Idiots.

Fourth—Lunatics and insane persons.

Fifth—Persons who committed the act or made the omission charged, under an ignorance or mistake of fact which disproves any criminal intent;

Sixth—Persons who committed the act charged without being conscious thereof.

Seventh—Persons who committed the act or made the omission charged, through misfortune or by accident, when it appears that there was no evil design, intention, or culpable negligence.

Eighth—Married women (unless the crime be punishable with death) acting under the threats, command, or coercion of their husbands;

Ninth—Persons (unless the crime be punishable with death) who committed the act or made the omission charged under threats or menaces sufficient to show that they had reasonable cause to, and did believe their lives would be endangered if they refused.

Who are liable to punishment.

(1853.) Sec. 23. The following persons are liable to punishment under the laws of this Territory;

First—All persons who commit in whole, or in part any crime within this Territory;

Second—All who commit larceny or robbery out of this Territory and bring to, or are found with, the property stolen, in this Territory;

Third—All who, being out of this Territory cause or aid, advise or encourage, another person to commit a crime within this Territory and are afterwards found therein.

TITLE II.

OF PARTIES TO CRIME.

Section.
1854. Classification of parties to crime.
55. Who are principals.
Section.
1856. Who are accessories.
1857. Punishment of accessories.

Classification of parties to crime.

(1854.) Sec. 24. The parties to crimes are classified as:
First—Principals; and
Second—Accessories.

Who are principals.

(1855.) Sec. 25. All persons concerned in the commission of a crime, whether it be felony or misdemeanor, and whether they directly commit the act constituting the offense, or aid and abet in its commission, or not being present, have advised and encouraged its commission, and all persons counseling, advising or encouraging children under the age of fourteen years, lunatics or idiots, to commit any crime, or who, by fraud, contrivance, or force occasion the drunkenness of another for the purpose of causing him to commit any crime, or who, by threats, menaces, command, or coercion compel another to commit any crime, are principals in any crime so committed.

Who are accessories.

(1856.) SEC. 26. All persons, who after full knowledge that a felony has been committed, conceal it from the magistrate, or harbor and protect the person charged with or convicted thereof, are accessories.

Punishment of accessories.

(1857.) SEC. 27. Except in cases where a different punishment is prescribed, an accessory is punishable by imprisonment in the penitentiary not exceeding three years; or in the county jail, not exceeding one year; or by fine not exceeding one thousand dollars.

TITLE III.

OF CRIMES BY AND AGAINST THE EXECUTIVE POWER OF THE TERRITORY.

SECTION.
1858. Acting in a public capacity without having qualified.
1859. Acts of officers de facto not affected.
1860. Giving or offering bribes to executive officers.
1861. Asking or receiving bribes.
1862. Resisting officers.
1863. Extortion.
SECTION.
1864. Fraudulently presenting bills or claims to public officers for allowance or payment.
1865. Buying appointments to office.
1866. Taking rewards for deputation.
1867. Exercising functions of office wrongfully.
1868. Refusal to surrender books, etc., to successor.

Acting in a public capacity without having qualified.

(1858.) SEC. 28. Every person who exercises any of the functions of a public office without having taken and filed the oath of office, or without having executed and filed the required bond, is guilty of a misdemeanor.

Acts of officers de facto not affected.

(1859.) SEC. 29. The last section shall not be construed to affect the validity of acts done by a person exercising the functions of a public office in fact, where other persons than himself are interested in maintaining the validity of such acts.

Giving or offering bribes to executive officers.

(1860.) SEC. 30. Every person who gives or offers any bribe to any executive officer of this Territory, with intent to influence him in respect to any act, decision, vote, opinion, or other proceeding as such officer, is guilty of a felony.

Asking or receiving bribes.

(1861.) SEC. 31. Every executive officer, or person elected or appointed to an executive office, who asks, receives or agrees to receive, any bribe, upon any agreement or understanding that his vote, opinion, or action upon any matter then pending, or which may be brought before him in his official capacity, shall be influenced thereby, is guilty of felony.

Resisting officers.

(1862.) SEC. 32. Every person who attempts, by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed upon such officer by law, or who knowingly resists, by the use of force or violence, such officer in the performance of his duty, is punishable by fine not exceeding one thousand dollars and imprisonment in the county jail not exceeding one year.

Extortion.

(1863.) SEC. 33. Every executive officer who asks or receives any emolument, gratuity, or reward, or any promise thereof, excepting such as may be authorized by law, for doing any official act, is guilty of a misdemeanor.

Fraudulently presenting bills or claims to public officers for allowance or payment.

(1864.) SEC. 34. Every person who with intent to defraud, presents for allowance or for payment to any county court, auditor of public accounts, city council, or other officer authorized to allow or pay the same if genuine, any false or fraudulent claim, bill, account, voucher, or writing, is guilty of a misdemeanor.

Buying appointments to office.

(1865.) SEC. 35. Every person who gives or offers any gratuity or reward, in consideration that he or any other person shall be appointed to any public office, or shall be permitted to exercise or discharge the duties thereof, is guilty of a misdemeanor.

Taking rewards for deputation.

(1866.) SEC. 36. Every public officer, who, for any gratuity or reward, appoints another person to a public office, or presents another person to exercise or discharge any of the duties of his office, is punishable by a fine not exceeding one thousand dollars.

(1867.) SEC. 37. Every person who willfully and knowingly intrudes himself into any public office to which he has not been elected or appointed, and every person who, having been an executive officer, willfully exercises any of the functions of his office after his term has expired and a successor has been elected or appointed, and has qualified, is guilty of a misdemeanor.

Exercising functions of office wrongfully.

(1868.) SEC. 38. Every officer whose office is abolished by law, or who, after the expiration of the time for which he may be appointed or elected, or after he has resigned or been legally removed from office, willfully or unlawfully withholds or detains from his successor or other person entitled thereto the records, papers, documents, or other writing appertaining or belonging to his office, or mutilates, destroys, or takes away the same, is guilty of a felony.

Refusal to surrender books, etc., to successor.

TITLE IV.

OF CRIMES AGAINST PUBLIC JUSTICE.

CHAPTER I. Bribery and corruption.
CHAPTER II. Rescues.
CHAPTER III. Escapes and aiding therein.
CHAPTER IV. Forging, stealing, mutilating and falsifying judicial and public records and documents.
CHAPTER V. Perjury and subornation of perjury.
CHAPTER VI. Falsifying evidence.
CHAPTER VII. Other offenses against public justice.
CHAPTER VIII. Conspiracy.

CHAPTER I.

BRIBERY AND CORRUPTION.

SECTION.
1869. Giving bribes to judges, jurors, referees, etc.
1870. Receiving bribes by judicial officers, jurors, etc.
1871. Extortion.
1872. Improper attempts to influence jurors, referees, etc.
1873. Misconduct of jurors, referees, etc.
1874. Justice or constable purchasing judgment.
1875. Officers to forfeit and be disqualified from holding office.

Giving bribes to judges, jurors, referees, etc.

(1869.) SEC. 39. Every person who gives or offers to give a bribe or attempts corruptly to influence any judicial officer, juror, referee, arbitrator, or umpire, or to any person who may be authorized by law to hear or determine any question or controversy, with intent to influence his vote, opinion, or decision upon any matter or question which is or may be brought before him for decision, is guilty of a felony.

Receiving bribes by judicial officers, jurors, etc.

(1870.) SEC. 40. Every judicial officer, juror, referee, arbitrator or umpire, and every person authorized by law to hear or determine any question or controversy, who asks or receives, or agrees to receive, any bribe, upon any agreement or understanding that his vote, opinion or decision upon any matter or question which is or may be brought before him for decision, shall be influenced thereby, is guilty of a felony.

(1871.) SEC. 41. Every judicial officer who asks or receives any emolument, gratuity or reward, or any promise thereof, except such as may be authorized by law for doing any official act, is guilty of a misdemeanor. Extortion.

(1872.) SEC. 42. Every person who corruptly attempts to influence a juror, or any person summoned or drawn as a juror, or chosen as an arbitrator or umpire, or appointed a referee, in respect to his verdict in, or decision of, any cause pending or about to be brought before him, is guilty of a misdemeanor. Improper attempt to influence jurors, referees, etc.

(1873.) SEC. 43. Every juror or person drawn or summoned as a juror, or chosen arbitrator or umpire or appointed referee who either: Misconduct of jurors, referees, etc.

First—Makes any promise or agreement to give a verdict or decision for or against any party; or,

Second—Willfully and corruptly permits any communication to be made to him, or receives any book, paper, instrument or information relating to any cause pending before him, except according to the regular course of proceedings upon the trial of such cause, is punishable by fine not exceeding one thousand dollars, or by imprisonment in the penitentiary not exceeding one year.

(1874.) SEC. 44. Every justice of the peace or constable of the same precinct who purchases or is interested in the purchase of any judgment or part thereof, on the docket of, or on any docket in possession of such justice, is guilty of a misdemeanor. Justice or constable purchasing judgment.

(1875.) SEC. 45. Every officer convicted of any crime defined in this chapter, in addition to the punishment prescribed, forfeits his office. Officers to forfeit office.

CHAPTER II.

RESCUES.

SECTION.
1876. Rescuing prisoners, punishment for.

SECTION.
1877. Retaking goods from custody of officers.

Rescuing prisoners, punishment for.

(1876.) SEC. 46. Every person who rescues or attempts to rescue, or aids another person in rescuing or attempting to rescue, any prisoner from any prison, or from any officer or person having him in lawful custody, is punishable as follows:

First—If such prisoner was in custody upon a conviction of felony punishable with death, by imprisonment in the penitentiary not less than one nor more than five years;

Second—If such prisoner was in custody upon a conviction of any other felony, by imprisonment in the penitentiary not less than six months nor more than one year;

Third—If such prisoner was in custody upon a charge of felony, by fine not exceeding five hundred dollars or by imprisonment in the county jail not exceeding one year, or by both;

Fourth—If such prisoner was in custody otherwise than upon a charge or conviction of felony, by fine not exceeding three hundred dollars or imprisonment in the county jail not exceeding six months or by both.

Retaking goods from custody of officers.

(1877.) SEC. 47. Every person who willfully injures or destroys, or takes or attempts to take, or assists any person in taking or attempting to take, from the custody of any officer or person, any personal property which such officer or person has in charge under any process of law, is guilty of a misdemeanor.

CHAPTER III.

ESCAPES AND AIDING THEREIN.

SECTION.
1878. Officers suffering convicts to escape.
1879. Assisting prisoners to escape.
SECTION.
1880. Carrying into prison things useful to aid in an escape.

(1878.) SEC. 48. Every keeper of a prison, sheriff, deputy sheriff, constable, or jailor, or person employed as a guard, who fraudulently contrives, procures, aids, connives at, or voluntarily permits the escape of any prisoner in custody, is punishable by imprisonment in the penitentiary not exceeding three years and by fine not exceeding one thousand dollars. Officers suffering convicts to escape.

(1879.) SEC. 49. Every person who willfully assists any prisoner confined in any prison or in the lawful custody of any officer or person to escape, or in an attempt to escape from such prison or custody, is punishable as provided in the preceding section. Assisting prisoners to escape.

(1880.) SEC. 50. Every person who carries or sends into a prison anything useful to aid a prisoner in making his escape, with intent thereby to facilitate the escape of any prisoner confined therein, is punishable as provided in section forty-eight. Carrying into prison things useful to aid in an escape.

CHAPTER IV.

FORGING, STEALING, MUTILATING, AND FALSIFYING JUDICIAL AND PUBLIC RECORDS AND DOCUMENTS.

SECTION.
1881. Larceny, destruction, etc., of records by officers having them in custody.
1882. Larceny, destruction, etc., of records by other persons.
SECTION.
1883. Offering false or forged instruments to be filed of record.

Larceny, destruction, etc., of records by officers having them in custody.

(1881.) SEC. 51. Every officer having the custody of any record, map, or book, or of any paper or proceeding of any court, filed or deposited in any public office, or placed in his hands for any purpose, who is guilty of stealing, willfully destroying, mutilating, defacing, altering or falsifying, removing or secreting the whole or any part of such record, map, book, paper, or proceeding, or who permits any other person so to do, is guilty of felony.

Larceny, destruction, etc., of records by other persons.

(1882.) SEC. 52. Every person not an officer such as is referred to in the preceding section, who is guilty of any of the acts specified in that section is punishable by imprisonment in the penitentiary not exceeding three years, or in a county jail not exceeding one year, or by a fine not exceeding one hundred dollars or by both.

Offering false or forged instruments to be filed of record.

(1883.) SEC. 53. Every person who knowingly procures or offers any false or forged instrument, to be filed, registered or recorded in any public office within this Territory, which instrument, if genuine, might be filed, or registered, or recorded under any law of this Territory or of the United States, is guilty of felony.

CHAPTER V.

PERJURY AND SUBORNATION OF PERJURY.

SECTION.
1884. Perjury defined.
1885. Oath defined.
1886. Oath of office.
1887. Irregularity in administering.
1888. Incompetency of witness no defense.

SECTION.
1889. Witness' knowledge of materiality of his testimony not necessary.
1890. Making deposition, etc., when deemed complete.
1891. Punishment of perjury.
1892. Subornation of perjury.

Perjury defined.

(1884.) SEC. 54. Every person who, having taken an oath that he will testify, declare, depose, or certify truly before any competent tribunal, officer, or person, in any of the cases in which such an oath may by law be administered, willfully and contrary to such oath, states as true any material matter which he knows to be false, is guilty of perjury.

Oath defined.

(1885.) SEC. 55. The term "oath" as used in the last section, includes an affirmation, and every other mode authorized by law of attesting the truth of that which is stated.

Oath of office.

(1886.) SEC. 56. So much of an oath of office as relates to the future performance of official duties is not such an oath as is intended by the two preceding sections.

Irregularity in administering.

(1887.) SEC. 57. It is no defense to a prosecution for perjury that the oath was administered or taken in an irregular manner.

Incompetency of witness no defense.

(1888.) SEC. 58. It is no defense to a prosecution for perjury that the accused was not competent to give the testimony, deposition, or certificate of which falsehood is alleged. It is sufficient that he did give such testimony or make such deposition, or certificate.

Witness' knowledge of materiality of his testimony not necessary.

(1889.) SEC. 59. It is no defense to a prosecution for perjury that the accused did not know the materiality of the false statement made by him; or that it did not, in fact, affect the proceeding in or for which it was made. It is sufficient that it was material, and might have been used to affect such proceeding.

Making depositions, etc., when deemed complete.

(1890.) SEC. 60. The making of a deposition or certificate is deemed to be complete, within the provisions of this chapter, from the time when it is delivered by the accused to any other person with the intent that it be uttered or published as true.

Punishment of perjury.

(1891.) SEC. 61. Perjury is punishable by imprisonment in the penitentiary not less than one nor more that ten years.

Subornation of perjury.

(1892.) SEC. 62. Every person who willfully procures another person to commit perjury is guilty of subornation of perjury, and is punishable in the same manner as he would be if personally guilty of the perjury so procured.

CHAPTER VI.

FALSIFYING EVIDENCE.

SECTION.
1893. Offering false evidence.
1894. Preventing or dissuading witness from attending.
SECTION.
1895. Bribing witnesses.
1896. Taking or offering to take bribes.

Offering false evidence.

(1893.) SEC. 63. Every person who upon any trial, proceeding, inquiry, or investigation whatever, authorized or permitted by law, offers in evidence, as genuine or true any book, paper, document, record, or other instrument in writing, knowing the same to have been forged or fraudulently altered or ante-dated, is guilty of felony.

Preventing or dissuading witness from attending.

(1894.) SEC. 64. Every person who willfully prevents or dissuades any person who is or may become a witness, from attending upon any trial, proceeding, or inquiry authorized by law, is guilty of a misdemeanor.

Bribing witnesses.

(1895.) SEC. 65. Every person who gives or offers, or promises to give, to any witness, or person about to be called as a witness, any bribe, upon any understanding or agreement that the testimony of such witness shall be thereby influenced, or who attempts by any other means fraudulently to induce any witness to give false or to withhold true testimony is guilty of a misdemeanor.

Taking or offering to take bribes.

(1896.) SEC. 66. Every person who is a witness, or is about to be called as such, who receives or offers to receive any bribe, upon any understanding that his testimony shall be influenced thereby, or that he will absent himself from the trial or proceeding upon which his testimony is required, is guilty of a misdemeanor.

CHAPTER VII.

OFFENSES AGAINST PUBLIC JUSTICE.

SECTION.
1897. Officers refusing to receive or arrest parties charged with crime.
1898. Delaying to take person arrested before magistrate.
1899. Making arrest, etc., without lawful authority.
1900. Inhumanity to prisoners.
1901. Resisting public officers in the discharge of their duties.
1902. Assaults, etc., by officers under color of authority.
1903. Refusing to aid officers in arrest, etc.
1904. Compounding crimes.
1905. Debtor fraudulently concealing his property.

SECTION.
1906. Defendant fraudulently concealing his property.
1907. Common barratry defined, how punished.
1908. What proof is required.
1909. Grand juror acting after challenge has been allowed.
1910. Disclosing fact of indictment or presentment having been found or made.
1911. Grand juror disclosing what transpired before the grand jury.
1912. Omission of duty by public officer.
1913. Commission of prohibited acts when no penalty is prescribed.

Officers refusing to receive or arrest parties charged with crime.

(1897.) SEC. 67. Every sheriff, coroner, keeper of a jail, constable, or other peace officer, who willfully refuses to receive or arrest any person charged with a criminal offense, is punishable by fine not exceeding one thousand dollars and imprisonment in the county jail not exceeding one year.

Delaying to take persons arrested before a magistrate.

(1898.) SEC. 68. Every public officer or other person, having arrested any person upon a criminal charge, who willfully delays to take such person before a magistrate having jurisdiction to take his examination, is guilty of a misdemeanor.

Making arrests, etc., without lawful authority.

(1899.) SEC. 69. Every public officer, or person pretending to be a public officer, who under the pretense or color of any process or other legal authority, arrests any person or detains him against his will, or seizes or levies upon any property, or dispossesses any one of any lands or tenements, without a regular process or other lawful authority therefor, is guilty of a misdemeanor.

Inhumanity to prisoners.

(1900.) SEC. 70. Every officer who is guilty of willful inhumanity or oppression toward any prisoner under his care or in his custody, is punishable by fine not exceeding one thousand dollars or by imprisonment in the county jail not exceeding one year.

Resisting public officers in the discharge of their duties.

(1901.) SEC. 71. Every person who willfully resists, delays, or obstructs any public officer, in the discharge or attempt to discharge any duty of his office, when no other punishment is prescribed, is punishable by fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding one year, or by both.

Assaults, etc., by officers under color of authority.

(1902.) SEC. 72. Every public officer who, under color of authority, without lawful necessity, assaults or beats any person, is punishable by fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding one year.

Refusing to aid officers in arrest, etc.

(1903.) SEC. 73. Every male person above eighteen years of age who neglects or refuses to join the *posse comitatus* or power of the county, by neglecting or refusing to aid and assist in taking or arresting any person against whom there may be issued any process, or by neglecting to aid and assist in retaking any person who, after being arrested or confined, may have escaped from such arrest or imprisonment, or by neglecting or refusing to aid and assist in preventing any breach of the peace, or the commission of any criminal offense, being thereto lawfully required by any sheriff, deputy sheriff, coroner, constable, judge, or justice of the peace, or other officer concerned in the administration of justice, is punishable by fine of not exceeding one hundred dollars.

Compounding crimes.

(1904.) SEC. 74. Every person who, having knowledge of the actual commission of a crime, takes money or property of another, or any gratuity or reward, or any engagement, or promise thereof, upon any agreement or understanding to compound or conceal such crime, or to abstain from any prosecution thereof, or to withhold any evidence thereof, except in the cases provided for by law, in which crimes may be compromised by leave [of] court, is punishable as follows:

First—By imprisonment in the penitentiary not exceeding five years, or in a county jail not exceeding one year, where the crime was punishable by death or imprisonment in the penitentiary for life.

Second—By imprisonment in the penitentiary not exceeding three years, or in the county jail not exceeding six months, where the crime was punishable by imprisonment in the penitentiary for any other term than for life;

Third—By imprisonment in the county jail not exceeding six months, or by fine not exceeding one hundred dollars where the crime was a misdemeanor.

Debtor fraudulently concealing his property.

(1905.) SEC. 75. Every debtor who fraudulently removes his property or effects out of this Territory, or fraudulently sells, conveys, assigns or conceals his property with intent to defraud, hinder or delay his creditors of their rights, claims or demands is punishable by imprisonment in the county jail not exceeding one year, or by fine not exceeding one thousand dollars, or by both.

Defendant fraudulently concealing his property.

(1906.) SEC. 76. Every person against whom an action is pending, or against whom a judgment has been rendered for the recovery of any personal property, who fraudulently conceals, sells, or disposes of such property, with intent to hinder, delay, or defraud the person bringing such action or receiving such judgment, or with such intent removes such property beyond the limits of the county in which it may be at the time of the commencement of such action or the rendering of such judgment, is punishable as provided in the preceding section.

Common barratry defined, how punished.

(1907.) SEC. 77. Common barratry is the practice of exciting groundless judicial proceedings, and is punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding three hundred dollars, or by both.

What proof is required.

(1908.) SEC. 78. No person can be convicted of common barratry except upon proof that he has excited suits or proceedings at law in at least three instances, and with a corrupt and malicious intent to vex and annoy.

Grand juror acting after challenge has been allowed.

(1909.) SEC. 79. Every grand juror who, with knowledge that a challenge interposed against him by a defendant has been allowed, is present at or takes part or attempts to take part in the consideration of the charge against the defendant who interposed the challenge, or the deliberations of the grand jury thereon is guilty of a misdemeanor.

Disclosing fact of indictment or presentment having been found or made.

(1910.) SEC. 80. Every grand juror, district attorney, clerk, judge or other officer, who, except by issuing or in executing a warrant of arrest, willfully discloses the fact of a presentment of an indictment having been made for a felony, until the defendant has been arrested is guilty of a misdemeanor.

Grand juror disclosing what transpired before the grand jury.

(1911.) SEC. 81. Every grand juror who, except when required by a court, willfully discloses any evidence adduced before the grand jury, or anything which he himself or any other member of the grand jury may have said, or in what manner he or any other grand juror may have voted on a matter before them, is guilty of a misdemeanor.

Omission of duty by public officers.

(1912.) SEC. 82. Every willful omission to perform any duty enjoined by law upon any public officer, or person holding any public trust or employment, where no special provision shall have been made for the punishment of such delinquency, is punishable as a misdemeanor.

Commission of prohibited acts when no penalty is prescribed.

(1913.) SEC. 83. Where the performance of any act is prohibited by any statute, and no penalty for the violation of such statute is imposed in any statute, the doing of such act is a misdemeanor.

CHAPTER VIII.

CONSPIRACY.

SECTION.
1914. Criminal conspiracy defined and punishment fixed.
1915. No other conspiracies punishable criminally.
SECTION.
1916. Overt act, when necessary.

Criminal conspiracy defined and punishment fixed.

(1914.) SEC. 84. If two or more persons conspire:

First—To commit any crime; or,

Second—Falsely and maliciously to indict another for any crime, or to procure another to be charged or arrested for any crime; or,

Third—Falsely to move or maintain any suit, action or proceeding; or,

Fourth—To cheat and defraud any person of any property by any means which are in themselves criminal, or by any means which, if executed, would amount to a cheat, or to obtaining money or property by false pretenses; or,

Fifth—To commit any act injurious to the public health, to public morals, or to trade or commerce, or for the perversion or obstruction of justice or the due administration of the laws;

They are punishable by imprisonment in the county jail not exceeding one year, or by fine not exceeding one thousand dollars.

No other conspiracies punishable criminally.

(1915.) SEC. 85. No conspiracies, other than those enumerated in the preceding section are punishable criminally.

Overt act, when necessary.

(1916.) SEC. 86. No agreement, except to commit a felony upon the person of another, or to commit arson, or burglary, amounts to a conspiracy, unless some act, besides such agreement, be done to effect the object thereof, by one or more of the parties to such agreement.

TITLE VIII.(1)

OF CRIMES AGAINST THE PERSON.

CHAPTER I. Homicide.
CHAPTER II. Mayhem.
CHAPTER III. Kidnapping.
CHAPTER IV. Robbery.
CHAPTER V. Attempts to kill.
CHAPTER VI. Assaults with intent to commit felony, other than assaults with intent to murder.
CHAPTER VII. Duels and challenges.
CHAPTER VIII. False imprisonment.
CHAPTER IX. Assault and battery.
CHAPTER X. Libel.

CHAPTER I.

HOMICIDE.

SECTION.
1917. Murder defined.
1918. Malice defined.
1919. Degrees of murder.
1920. Punishment of murder.
1921. Manslaughter defined, voluntary and involuntary manslaughter.
1922. Punishment of manslaughter.
1923. Deceased must die within a year and a day.
SECTION.
1924. Excusable homicide.
1925. Justifiable homicide by public officers.
1926. Justifiable homicide by other persons.
1927. Bare fear not to justify killing.
1928. Justifiable and excusable homicide not punishable.

(1917.) SEC. 87. Murder is the unlawful killing of a human being with malice aforethought. Murder defined.

(1918.) SEC. 88. Such malice may be express or implied. It is express when there is manifested a deliberate intention unlawfully to take away the life of a fellow creature. It is implied when no considerable provocation appears, or when the circumstances attending the killing show an abandoned or malignant heart. Malice defined.

(1919.) SEC. 89. Every murder perpetrated by poison, lying in wait, or any other kind of willful, deliberate, malicious, and premeditated killing; or committed in the per- Degrees of Murder.

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(1) These titles are not numbered consecutively on the enrolled bill.

petration of, or attempt to perpetrate, any arson, rape, burglary, or robbery, or perpetrated from a premeditated design, unlawfully and maliciously to effect the death of any other human being, other than him who is killed; or perpetrated by any act greatly dangerous to the lives of others, and evidencing a depraved mind, regardless of human life, is murder in the first degree; and any other homicide committed under such circumstances as would have constituted murder at common law, is murder, in the second degree.

Punishment of murder.

(1920.) SEC. 90. Every person guilty of murder in the first degree shall suffer death, or, upon the recommendation of the jury, may be imprisoned, at hard labor in the penitentiary for life, at the discretion of the court, and every person guilty of murder in the second degree shall be imprisoned at hard labor in the penitentiary for not less than five, nor more than fifteen years.

Manslaughter defined.

(1921.) SEC. 91. Manslaughter is the unlawful killing of a human being, without malice. It is of two kinds:

First—Voluntary, upon a sudden quarrel or heat of passion;

Voluntary and involuntary manslaughter.

Second—Involuntary, in the commission of an unlawful act, not amounting to felony; or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection.

Punishment of manslaughter.

(1922.) SEC. 92. Voluntary manslaughter is punishable by imprisonment in the penitentiary not exceeding five years; involuntary manslaughter is punishable by imprisonment in the county jail not exceeding one year.

Deceased must die within a year and a day.

(1923.) SEC. 93. To make the killing either murder or manslaughter, it is requisite that the party die within a year and a day after the stroke received or the cause of death administered; in the computation of which the whole of the day on which the act was done shall be reckoned the first.

Excusable homicide.

(1924.) SEC. 94. Homicide is excusable in the following cases:

First—When committed by accident and misfortune, in doing any lawful act by lawful means, with usual and ordinary caution and without any unlawful intent.

Second—When committed by accident and misfortune, in the heat of passion, upon any sudden and sufficient provocation, or upon a sudden combat, when no undue advantage is taken, nor any dangerous weapon used, and when the killing is not done in a cruel or unusual manner.

Justifiable homicide by public officers.

(1925.) SEC. 95. Homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance, either:

First—In obedience to any judgment of a competent court; or,

Second—When necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty; or,

Third—When necessarily committed in retaking felons who have been rescued or have escaped, or when necessarily committed in arresting persons charged with felony, and who are fleeing from justice or resisting such arrest.

Justifiable homicide by other persons.

(1926.) SEC. 96. Homicide is also justifiable when committed by any person in either of the following cases:

First—When resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person; or,

Second—When committed in defense of habitation, property, or person, against one who manifestly intends or endeavors, by violence or surprise, to commit a felony, or against one who manifestly intends and endeavors, in a violent, riotous or tumultuous manner, to enter the habitation of another for the purpose of offering violence to any person therein; or,

Third—When committed in the lawful defense of such person, or of a wife or husband, parent, child, master, mistress, or servant of such person, when there is reasonable ground to apprehend a design to commit a felony or to do some great bodily injury, and imminent danger of such design being accomplished; but such person, or the person in whose behalf the defense was made, if he was the assailant or engaged in mortal combat, must really and in good faith have endeavored to decline any further struggle before the homicide was committed; or in a sudden heat of passion caused by the attempt of any such offender to commit a rape upon his wife, daughter, sister, mother or other female relation or dependent, or to defile the same, or when the defilement has actually been committed; or,

Fourth—When necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed, or in lawfully suppressing any riot, or in lawfully keeping and preserving the peace.

Bare fear not to justify killing.

(1927.) SEC. 97. A bare fear of the commission of any of the offenses mentioned in subdivisions two and three of the preceding section, to prevent which homicide may be lawfully committed, is not sufficient to justify it. But the circumstances must be sufficient to excite the fears of a reasonable person, and the party killing must have acted wholly under the influence of such fears.

Justifiable and excusable homicide not punishable.

(1928.) SEC. 98. The homicide appearing to be justifiable or excusable, the person indicted must, upon his trial, be fully acquitted and discharged.

CHAPTER II.

MAYHEM.

SECTION.
1929. Mayhem defined.

SECTION.
1930. Mayhem, how punishable.

Mayhem defined.

(1929.) SEC. 99. Every person who unlawfully and maliciously deprives a human being of a member of his body, or disables, or renders it useless, or who cuts out or disables the tongue, puts out an eye, slits the nose, ear, or lip, is guilty of mayhem.

Mayhem, how punishable.

(1930.) SEC. 100. Mayhem is punishable by imprisonment in the penitentiary not exceeding ten years.

CHAPTER III.

KIDNAPPING.

SECTION.
1931. Kidnapping defined.

SECTION.
1932. Punishment of kidnapping.

Kidnapping defined.

(1931.) SEC. 101. Every person who forcibly steals, takes, or arrests any person in this Territory, and carries him into another country, State, or county, or who forcibly takes or arrests any person, with a design to take him out of this Territory without having established a claim according to the laws of the United States, or of this Territory, or who hires, persuades, entices, decoys or seduces by false promises, misrepresentations, or the like, any person to go out of this Territory, or to be taken or removed therefrom, for the purpose and with the intent to sell such person into slavery or involuntary servitude, or otherwise to employ him for his own use, or to the use of another, without the free will and consent of such persuaded person, is guilty of kidnapping.

Punishment of kidnapping.

(1932.) SEC. 102. Kidnapping is punishable by imprisonment in the penitentiary, not less than one nor more than ten years.

CHAPTER IV.

ROBBERY.

SECTION.	SECTION.
1933. Robbery defined.	1934. Punishment of robbery.

Robbery defined.

(1933.) SEC. 103. Robbery is the felonious taking of personal property in the possession of another, from his person, or immediate presence, and against his will, accomplished by means of force or fear.

Punishment of robbery.

(1934.) SEC. 104. Robbery is punishable by imprisonment in the penitentiary, not less than one year nor more than ten years.

CHAPTER V.

ATTEMPTS TO KILL.

SECTION.	SECTION.
1935. Administering poison; punishment for.	1936. Assault with intent to commit murder.

Administering poison.

(1935.) SEC. 105. Every person who, with intent to kill, administers, or causes or procures to be administered, to

Punishment for.

another, any poison or other noxious or destructive substance or liquid, but by which death is not caused, is punishable by imprisonment in the penitentiary, not less than five years.

Assault with intent to commit murder.

(1936.) Sec. 106. Every person who assaults another with intent to commit murder, is punishable by imprisonment in the penitentiary, not less than one nor more than ten years.

CHAPTER VI.

ASSAULTS WITH INTENT TO COMMIT FELONY, OTHER THAN ASSAULTS WITH INTENT TO MURDER.

Section.
1937. Assault with intent to commit rape, etc.
1938. Other assaults.
1939. Administering stupefying drugs.

Assault with intent to commit rape, etc.

(1937.) Sec. 107. Every person who assaults another with intent to commit rape, the infamous crime against nature, mayhem, or robbery, is punishable by imprisonment in the penitentiary not less than one nor more than ten years.

Other assaults.

(1938.) Sec. 108. Every person who is guilty of an assault, with intent to commit any felony, except an assault with intent to commit murder, the punishment for which assault is not prescribed by the preceding section, is punishable by imprisonment in the penitentiary not exceeding five years, or in a county jail not exceeding one year, or by fine not exceeding three hundred dollars, or by both.

Administer-stupefying drugs.

(1939.) Sec. 109. Every person guilty of administering to another any chloroform, ether, laudanum, or other narcotic, anæsthetic, or intoxicating agent, with intent thereby to enable or assist himself or any other person to commit a felony, is guilty of felony.

CHAPTER VII.

DUELS AND CHALLENGES.

SECTION.
1940. Duel defined.
1941. Punishment for fighting a duel, when death ensues.
1942. Punishment for fighting a duel although death does not ensue.

SECTION.
1943. Punishment for sending or accepting challenge to fight a duel and for posting for not fighting, etc.
1944. Duties of officers to prevent duels
1945. Witness' privilege.

Duel defined.

(1940.) SEC. 110. A duel is any combat wifh deadly weapons, fought between two or more persons, by previous agreement or upon a previous quarrel.

Punishment for fighting a duel when death ensues.

(1941.) SEC. 111. Every person guilty of fighting any duel, from which death ensues within a year and a day, is guilty of murder in the first degree.

Punishment for fighting a duel although death does not ensue.

(1942.) SEC. 112. Every person guilty of fighting any duel, although no death or wound ensues, is punishable by imprisonment in the penitentiary not exceeding one year.

Punishment for sending or accepting challenge to fight a duel, and for posting for not fighting, etc.

(1943.) SEC. 113. Every person guilty of sending or accepting a challenge to fight a duel or who acts as a second therein, or who posts or publishes another for not fighting a duel, or for not sending or accepting a challenge to fight a duel, or who uses any reproachful or contemptuous language, verbal, written or printed, to or censuring another, for not sending or accepting a challenge to fight a duel, or with intent to provoke a duel is guilty of a misdemeanor.

Duties of officers to prevent duels.

(1944.) SEC. 114. Every judge, justice of the peace, sheriff, or other officer bound to preserve the public peace, who has knowledge of the intention on the part of any persons to fight a duel, and who does not exert his official authority to arrest the party, and prevent the duel, is punishable by fine not exceeding five hundred dollars.

Witness' privilege.

(1945.) SEC. 115. No person shall be excused from testifying or answering any question upon any investigation or trial for a violation of either of the provisions of this chapter, upon the ground that his testimony might tend to convict him of a crime. But no evidence given upon any examination of a person so testifying shall be received against him in any criminal prosecution or proceeding.

CHAPTER VIII.

FALSE IMPRISONMENT.

SECTION.
1946. False imprisonment defined.

SECTION.
1947. False imprisonment, how punished.

False imprisonment defined. (1946.) SEC. 116. False imprisonment is the unlawful violation of the personal liberty of another.

False imprisonment, how punished (1947.) SEC. 117. False imprisonment is punishable by fine not exceeding three thousand dollars, or by imprisonment in the county jail not more than one year, or by both.

CHAPTER IX.

ASSAULT AND BATTERY.

SECTION.
1948. Assault defined.
1949. Assault how punished.
1950. Battery defined.

SECTION.
1951. Battery, how punished.
1952. Assault with caustic chemicals.
1953. Assaults with deadly weapons.

Assault defined. (1948.) SEC. 118. An assault is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.

Assault, how punished. (1949.) SEC. 119. An assault is punishable by fine not exceeding three hundred dollars, or by imprisonment in the county jail not exceeding three months.

Battery defined. (1950.) SEC. 120. A battery is any willful and unlawful use of force or violence upon the person of another.

Battery, how punished. (1951.) SEC. 121. A battery is punishable by fine not exceeding three hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both.

Assault with caustic chemicals. (1952.) SEC. 122. Every person who willfully and maliciously places or throws, or causes to be placed or thrown, upon the person of another, any vitriol, corrosive acid, or caustic chemical of any nature, with the intent to injure the flesh or disfigure the body of such person, is punishable by imprisonment in the penitentiary not less than one nor more than ten years.

Assaults with deadly weapons.

(1953.) SEC. 123. Every person who, with intent to do bodily harm, and without just cause or excuse, or when no considerable provocation appears, or when the circumstances show an abandoned or malignant heart, commits an assault upon the person of another, with a deadly weapon, instrument, or other thing, is punishable by imprisonment in the penitentiary not exceeding two years, or by fine not exceeding one thousand dollars, or by both.

CHAPTER X.

LIBEL.

SECTION.
1954. Libel defined.
1955. Punishment of libel.
1956. Malice presumed.
1957. Truth may be given in evidence, jury to determine law and fact.
1958. Publication defined.
1959. Liability of authors, editors and publishers.

SECTION.
1960. Publishing a true report of public official proceedings privileged.
1961. Extent of privilege.
1962. Other privileged communications.
1963. Threatening to publish libel, offer to prevent publication, with intent to extort money.

Libel defined.

(1954.) SEC. 124. A libel is a malicious defamation, expressed either by printing or by signs or pictures, or the like, tending to blacken the memory of one who is dead, or to impeach the honesty, integrity, virtue, or reputation, or publish the natural defects of one who is alive, and thereby to expose him to public hatred, contempt, or ridicule.

Punishment of libel.

(1955.) SEC. 125. Every person who willfully, and with a malicious intent to injure another, publishes or procures to be published any libel, is punishable by fine not exceeding one thousand dollars, or imprisonment in the county jail not exceeding one year.

Malice presumed.

(1956.) SEC. 126. An injurious publication is presumed to have been malicious if no justifiable motive for making it is shown.

Truth may be given in evidence; jury to determine law and fact.

(1957.) SEC. 127. In all criminal prosecutions for libel, the truth may be given in evidence to the jury, and if it appears to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends; the party shall be acquitted. The jury have the right to determine the law and the fact.

Publication defined.

(1958.) SEC. 128. To sustain a charge of publishing a libel, it is enough that the accused knowingly parted with the immediate custody of the libel under circumstances which exposed it to be read or seen by any other person than himself.

Liability of authors, editors and publishers.

(1959.) SEC. 129. Each author, editor, and proprietor of any newspaper, or serial publication, is chargeable with the publication of any words contained in any part of such book or number of such newspaper or serial.

Publishing a true report of public official proceeding privileged.

(1960.) SEC. 130. No reporter, editor, or proprietor of any newspaper is liable to any prosecution for a fair and true report of any judicial, legislative, or other public official proceedings, or of any statement, speech, argument, or debate in the course of the same, except upon proof of malice in making such report, which shall not be implied from the mere fact of publication.

Extent of privilege.

(1961.) SEC. 131. Libelous remarks or comments connected with matter privileged by the last section receive no privilege by reason of their being so connected.

Other privileged communications.

(1962.) SEC. 132. A communication made to a person interested in the communication, by one who was also interested or who stood in such relation to the former as to afford a reasonable ground for supposing his motive innocent, is not presumed to be malicious, and is a privileged communication.

Threatening to publish a libel; offer to prevent publication, with intent to extort money.

(1963.) SEC. 133. Every person who threatens another to publish a libel concerning him, or any parent, husband, wife, or child of such person, or member of his family, and every person who offers to prevent the publication of any libel upon another person, with intent to extort any money or other valuable consideration from any person, is guilty of a misdemeanor.

TITLE IX.

OF CRIMES AGAINST THE PERSON AND AGAINST PUBLIC DECENCY AND GOOD MORALS.

CHAPTER I. Rape, abduction, carnal abuse of children, and seduction.
CHAPTER II. Abandonment and neglect of children.
CHAPTER III. Abortions.
CHAPTER IV. Child stealing.
CHAPTER V. The crime against nature.
CHAPTER VI. Violating sepultures and the remains of the dead.
CHAPTER VII. Of crimes and offenses against good morals.
CHAPTER VIII. Indecent exposure, obscene exhibition, books and prints, and bawdy and other disorderly houses.
CHAPTER IX. Lotteries.
CHAPTER X. Gaming.
CHAPTER XI. Other injuries to persons.

CHAPTER I.

RAPE, ABDUCTION, CARNAL ABUSE OF CHILDREN, AND SEDUCTION.

SECTION.
1964. Rape defined.
1965. When physical ability must be proved.
1966. Penetration sufficient.
1967. Punishment of rape.
SECTION.
1868. Abduction for purposes of prostitution.
1969. Abduction of female under age of eighteen for prostitution.

Rape defined.

(1964.) SEC. 134. Rape is an act of sexual intercourse accomplished with a female, not the wife of the perpetrator, under either of the following circumstances:

First—When the female is under the age of ten years.

Second—Where she is incapable, through lunacy or any other unsoundness of mind, whether temporary or permanent, of giving legal consent.

Third—Where she resists but her resistance is overcome by force or violence.

Fourth—Where she is prevented from resisting by threats of immediate and great bodily harm, accompanied by apparent power of execution; or by any intoxicating, narcotic, or anæsthetic substance administered by or with the privity of the accused.

Fifth—Where she is at the time unconscious of the nature of the act, and this is known to the accused.

Sixth—Where she submits under the belief that the person committing the act, is her husband, and this belief is indeed [induced] by any artifice, pretense, or concealment practiced by the accused, with intent to induce such belief.

When physical ability must be proved.

(1965.) Sec. 135. No conviction for rape can be had against one who was under the age of fourteen years at the time of the act alleged, unless his physical ability to accomplish penetration is proved on an independent fact, and beyond a reasonable doubt.

Penetration sufficient.

(1966.) Sec. 136. The essential guilt of rape consists in the outrage to the person and feelings of the female, any sexual penetration, however slight, is sufficient to complete the crime.

Punishment for rape.

(1967.) Sec. 137. Rape is punishable by imprisonment in the penitentiary not less than five years.

Abduction for purposes of prostitution.

(1968.) Sec. 138. Every person who inveigles or entices any female of previous chaste character, into any house of ill-fame, or of assignation, or elsewhere, for the purpose of prostitution; and every person who aids or assists in such abduction for such purpose; is punishable by imprisonment in the penitentiary not exceeding five years, or by imprisonment in the county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

Abduction of female under age of eighteen for prostitution.

(1969.) Sec. 139. Every person who takes away any female under the age of eighteen years from her father, mother, guardian, or other person having the legal charge of her person, without their consent, for the purpose of prostitution, is punishable by imprisonment in the penitentiary not exceeding five years, and a fine not exceeding one thousand dollars.

CHAPTER II.

ABANDONMENT AND NEGLECT OF CHILDREN.

Section.
1970. Omitting to provide child with necessaries.

Section.
1971. Deserting child.

(1970.) Sec. 140. Every parent, or guardian of any child who willfully omits, without lawful excuse, to perform any duty imposed upon him by law, to furnish necessary food, clothing, shelter, or attention for such child is guilty of a misdemeanor.

Omitting to provide child with necessaries.

(1971.) SEC. 141. Every parent of any child under the age of six years, and every person to whom any such child has been confided for nurture or education, who deserts such child in any place whatever, with intent wholly to abandon it, is punishable by imprisonment in the penitentiary not exceeding five years, or in a county jail not exceeding six months.

Deserting child.

CHAPTER III.

ABORTIONS.

SECTION 1972. Administering drugs, etc., with intent to produce miscarriage.

(1972.) SEC. 142. Every person who provides, supplies, or administers to any pregnant woman, or procures any such woman to take any medicine, drug, or substance, or uses or employs any instrument or other means whatever, with intent thereby to procure the miscarriage of such woman, unless the same is necessary to preserve her life, is punishable by imprisonment in the penitentiary not less than two nor more than ten years.

Administering drugs, etc., with intent to produce miscarriage.

CHAPTER IV.

CHILD STEALING.

SECTION 1973. Definition and punishment of child stealing.

(1973.) SEC. 143. Every person who maliciously, forcibly, or fraudulently takes or entices away any child under the age of twelve years, with intent to detain and conceal

Definition and punishment of child stealing.

such child from its parent, guardian, or other person having the lawful charge of such child, is punishable by imprisonment in the penitentiary not exceeding ten years, or by imprisonment in a county jail not exceeding one year, and a fine not exceeding five hundred dollars.

CHAPTER V.

THE CRIME AGAINST NATURE.

SECTION.
1974. Crime against nature.
SECTION.
1975. Penetration sufficient to complete the crime.

Crime against nature.

(1974.) SEC. 144. Every person who is guilty of the infamous crime against nature, committed with mankind or with any animal, is punishable by imprisonment in the penitentiary not more than five years.

Penetration sufficient to complete the crime.

(1975.) SEC. 145. Any sexual penetration, however slight, is sufficient to complete the crime against nature.

CHAPTER VI.

VIOLATING SEPULTURE AND THE REMAINS OF THE DEAD.

SECTION.
1976. Unlawful mutilation or removal of dead bodies, not to apply to certain persons.
SECTION.
1977. Unlawful removal of dead body from grave for dissection, etc.
1978. Defacing tombs and monuments.

Unlawful mutilation or removal of dead bodies.

Not to apply to certain persons.

(1976.) SEC. 146. Every person who mutilates, disinters or removes from the place of sepulture the dead body of a human being without authority of law, is guilty of felony. But the provisions of this section do not apply to any person who removes the dead body of a relative or friend for reinterment.

(1977.) SEC. 147. Every person who removes any part of the dead body of a human being from any grave or

Unlawful removal of dead body from grave for dissection, etc.

other place where the same has been buried, or from any place where the same is deposited while awaiting burial, with intent to sell the same or to dissect it, without authority of law, or from malice or wantonness, is punishable by imprisonment in the penitentiary not exceeding five years.

Defacing tombs and monuments.

(1978.) SEC. 148. Every person who willfully and maliciously defaces, breaks, destroys, or removes any tomb, monument, or gravestone, erected to any deceased person, or any memento or memorial, or any ornamental plant, tree, or shrub, appertaining to the place of burial of a human being, or who shall mark, deface, injure, destroy, or remove any fence, post, rail, or wall of any cemetery or graveyard, is guilty of a misdemeanor.

CHAPTER VII.

OF CRIMES AND OFFENSES AGAINST GOOD MORALS.

SECTION.
1979. Barbarous and noisy amusements, and theatres where liquors are sold prohibited no Sunday.
1980. Keeping open places of business on Sunday.
1981. Limitation in operation of preceding section.
1982. Disturbing religious meetings.
1983. Sale of liquors at theatres and employing women to sell liquors thereat.
1984. Performing unnecessary labor on Sunday.
1985. Preceding section does not apply to certain kinds of labor.
1986. When Sunday commences and ends.
SECTION.
1987. Selling liquors at camp or field meeting.
1988. Limitation of preceding section.
1989. Procuring female to play on musical instrument in public. Female playing musical instrument in public.
1990. Procuring female to exhibit herself for hire. Female exhibiting herself for hire.
1991. Furnishing intoxicating drink to persons under sixteen years of age. Proviso, as to parents, guardians and physicians.

Barbarous and noisy amusements and theatres where liquors are sold prohibited on Sunday.

(1979.) SEC. 149. Every person who, on Sunday, gets up, exhibits, opens, or maintains, or aids in getting up, exhibiting, opening, or maintaining any bull, bear, cock, or prize fight, horse race, circus, gambling house, or saloon, or any barbarous and noisy amusement, or who keeps, conducts, or exhibits any theatre, melodeon, dance, cellar, or other place of musical, theatrical, or operatic performance, spectacle, or representation where any wines, liquors, or intoxicating drinks are bought, sold, used, drank, or given away, or who purchases any ticket of admission, or directly or indirectly pays any admission fee to or for the purpose of witnessing or attending any such place, amusement, spectacle, performance, or representation, is guilty of a misdemeanor.

Keeping open places of business on Sunday.

(1980.) SEC. 150. Every person who keeps open on Sunday any store, workshop, bar, saloon, banking house, or other place of business, for the purpose of transacting business therein, is punishable by fine not less than five nor more than one hundred dollars.

Limitation in operation of preceding section.

(1981.) SEC. 151. The provisions of the preceding section do not apply to persons who, on Sunday, keep open hotels, boarding houses, baths, restaurants, taverns, livery stables, or retail drug stores for the legitimate business of each, or such manufacturing establishments as are usually kept in continued operation.

Disturbing religious meeting.

(1982.) SEC. 152. Every person who willfully disturbs or disquiets any assemblage of people, met for religious worship, by noise, profane discourse, rude, or indecent behavior, or by any unnecessary noise, either within the place where such meeting is held, or so near it as to disturb the order and solemnity of the meeting, is guilty of a misdemeanor.

Sale of liquors at theatres and employing women to sell thereat.

(1983.) SEC. 153. Every person who sells or furnishes any malt, vinous, or spirituous liquors to any person in the auditorium or lobbies of any theatre, melodeon, museum, circus, or caravan, or place where any farce, comedy, tragedy, ballet, opera, or play is being performed, or any exhibition of dancing, juggling, wax work figures and the like is being given for public amusement, and every person who employs or procures, or causes to be employed or procured, any person to sell or furnish any malt, vinous, or spirituous liquors at such place, is guilty of a misdemeanor.

Performing unnecessary labor on Sunday.

(1984.) SEC. 154. Every person who performs any unnecessary labor, or does any unnecessary business on Sunday, is guilty of a misdemeanor, and shall be fined in any sum not exceeding twenty-five dollars.

Preceding section does not apply to certain kinds of labor.

(1985.) SEC. 155. Labor performed by employes of such works as are usually kept in constant operation, and in irrigating, is not included in the foregoing section.

When Sunday commences and ends.

(1986.) SEC. 156. For the purposes of this act, Sunday shall commence at midnight Saturday, and terminate the following midnight.

Selling liquors at camp or field meetings.

(1987.) SEC. 157. Every person who erects or keeps a booth, tent, stall, or other contrivance for the purpose of selling or otherwise disposing of any wine, or spirituous, or intoxicating liquors, or any drink of which wines, spirituous, or intoxicating liquors form a part, or for selling or otherwise disposing of any article of merchandise, or who peddles, or hawks about any such drink or article, within one mile of any camp or field meeting for religious worship, during the time of holding such meeting, is punishable by fine of not less than five nor more than five hundred dollars.

Limitation of preceding section.

(1988.) SEC. 158. The provisions of the preceding section do not apply to any person carrying on a regular business in the sale of liquors or other articles, which business was established prior to the appointment of the meeting referred to in such section.

Procuring females to play on musical instruments in public.

Female playing musical instruments in public.

(1989.) SEC. 159. Every person who causes, procures, or employs any female to play for hire, drink, or gain upon any musical instrument, in any drinking saloon, dance room, or dance cellar, public garden, or any public highway, common, or street, or on a vessel, steamboat, or railroad car, or in any lewd house, or disorderly place whatsoever where two or more persons are assembled together, is punishable by fine not exceeding three hundred dollars, or by imprisonment in the county jail not exceeding three months, or by both; and any female so playing upon any musical instrument whatsoever, is punishable by fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding one month, or by both.

Procuring female to exhibit herself for hire.

Female exhibiting herself for hire.

(1990.) SEC. 160. Every person who causes, or procures, or employs any female, to dance, promenade, or otherwise exhibit herself for hire, drink, or gain, in any drinking saloon, dance cellar, or dance room, public garden, public highway, or in any place whatsoever (theatres excepted), where two or more persons are assembled together, is punishable by fine not exceeding three hundred dollars, or by imprisonment in the county jail not exceeding three months, or by both; and every female so dancing, promenading, or exhibiting herself, is punishable by fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding one month or by both.

Furnishing intoxicating drink to persons under sixteen years of age.

Proviso as to parents, guardians and physicians.

(1991.) SEC. 161. Every person who sells or gives to another under the age of sixteen years, to be by him drank at the time as a beverage, any intoxicating drink, is guilty of a misdemeanor, and punishable by a fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding three months: *Provided*, that nothing in this section shall be deemed to apply to parents of such children, or guardians of their wards, or physicians.

CHAPTER VIII.

INDECENT EXPOSURE, OBSCENE EXHIBITIONS, BOOKS AND PRINTS, AND BAWDY AND OTHER DISORDERLY HOUSES.

SECTION.
1992. Indecent exposures, exhibitions and pictures.
1993. Seizure of indecent articles authorized.
1994. Their character to be summarily determined.
SECTION.
1995. Their destruction.
1996. Keeping or residing in a house of ill fame.
1997. Keeping disorderly houses.

Indecent exposure exhibitions and pictures.

(1992.) SEC. 162. Every person who willfully and lewdly, either:

First—Exposes his person or the private parts thereof in any public place, or in any place where there are present other persons to be offended or annoyed thereby; or,

Second—Procures, counsels, or assists any person so to expose himself, or to take part in any model artist exhibition, or to make any other exhibition of himself to public view, or to the view of any number of persons, such as is offensive to decency, or is adapted to excite to vicious or lewd thoughts or acts; or,

Third—Writes, composes, stereotypes, prints, publishes, sells, distributes, keeps for sale, or exhibits, any obscene or indecent writing, paper, or book; or designs, copies, draws, engraves, paints, or otherwise prepares any obscene or indecent picture or print; or moulds, cuts, casts, or otherwise makes any obscene or indecent figure; or,

Fourth—Writes, composes, or publishes any notice or advertisement of any such writing, paper, book, picture, print, or figure; or any notice or advertisement for producing or facilitating a miscarriage; or,

Fifth—Sings any lewd or obscene song, ballad, or other words in any public place, or in any place where there are persons present to be annoyed thereby;

Is guilty of a misdemeanor.

(1993.) SEC. 163. Every person who is authorized or enjoined to arrest any person for a violation of subdivision three of the last section, is equally authorized and enjoined to seize any obscene or indecent writing, paper, book, picture, print, or figure found in possession or under the control of the person so arrested, and to deliver the same to the magistrate before whom the person so arrested is required to be taken.

Seizure of indecent articles authorized.

(1994.) SEC. 164. The magistrate to whom any obscene or indecent writing, paper, book, picture, print, or figure is delivered, pursuant to the foregoing section, must, upon the examination of the accused, or, if the examination is delayed or prevented, without awaiting such examination, determine the character of such writing, paper, book, picture, print, or figure, and if he finds it to be obscene or indecent, he must deliver one copy to the prosecuting attorney of the county in which the accused is liable to complaint or trial, and must at once destroy all the other copies.

Their character to be summarily determined.

(1995.) SEC. 165. Upon the conviction of the accused, such attorney must cause any writing, paper, book, picture, print, or figure, in respect whereof the accused stands convicted, and which remains in the possession or under the control of such attorney, to be destroyed.

Their destruction.

(1996.) SEC. 166. Every person who keeps a house of ill fame in this Territory, resorted to for the purpose of prostitution or lewdness, or who willfully resides in such house, or resorts thereto for lewdness, is guilty of a misdemeanor.

Keeping or residing in a house of ill fame.

(1997.) SEC. 167. Every person who keeps any disorderly house or any house of public resort, by which the peace, comfort, or decency of the immediate neighborhood is habitually disturbed, or who keeps any inn in a disorderly manner, is guilty of a misdemeanor.

Keeping disorderly houses.

CHAPTER IX.

LOTTERIES.

SECTION.
1998. Lottery defined.
1999. Punishment for drawing lottery.
2000. Punishment for selling lottery tickets.
2001. Aiding lotteries.
2002. Lottery offices; advertising lottery offices.

SECTION.
2003. Insuring lottery tickets; publishing offers to insure.
2004. Property offered for disposal in lottery forfeited.
2005. Letting building for lottery purposes.

Lottery defined.

(1998.) SEC. 168. A lottery is any scheme for the disposal or distribution of property by chance, among persons who have paid or promised to pay any valuable consideration for the chance of obtaining such property or a portion of it, or for any share, or any interest in such property, upon any agreement, understanding or expectation that it is to be distributed or disposed of by lot or chance, whether called a lottery, raffle, or gift enterprise, or by whatever name the same may be known.

Punishment for drawing lottery.

(1999.) SEC. 169. Every person who contrives, prepares, sets up, proposes, or draws any lottery, is guilty of a misdemeanor.

Punishment for selling lottery tickets.

(2000.) SEC. 170. Every person who sells, gives, or in any manner whatever, furnishes or transfers to or for any other person any ticket, chance, share, or interest, or any paper, certificate, or instrument purporting or understood to be or to represent any ticket, chance, share, or interest in, or depending upon the event of any lottery, is guilty of a misdemeanor.

Aiding lotteries.

(2001.) SEC. 171. Every person who aids or assists, either by printing, writing, advertising, publishing, or otherwise in setting up, managing, or drawing any lottery, or in selling or disposing of any ticket, chance, or share therein is guilty of a misdemeanor.

Lottery offices.

(2002.) SEC. 172. Every person who opens, sets up, or keeps, by himself or by any other person, any office or other place for the sale of, or for registering the number of any ticket in any lottery, or who, by printing, writing, or otherwise, advertises or publishes the setting up, opening, or using of any such office is guilty of a misdemeanor.

Advertising lottery offices.

(2003.) SEC. 173. Every person who insures or receives any consideration for insuring for or against the drawing of any ticket in any lottery whatever, whether drawn or to be drawn within the Territory or not, or who receives any valuable consideration upon any agreement to repay any sum, or deliver the same, or any other property, if any lottery ticket or number of any ticket in any lottery shall prove fortunate or unfortunate, or shall be drawn or not be drawn, at any particular time or in any particular order, or who promises or agrees to pay any sum of money, or to deliver any goods, things in action, or property, or to forbear to do anything for the benefit of any person with or without consideration, upon any event or contingency dependent on the drawing of any ticket in any lottery, or who publishes any notice or proposal of any of the purposes aforesaid, is guilty of a misdemeanor.

Insuring lottery tickets.

Publishing offers to insure.

(2004.) SEC. 174. All moneys and property offered for sale or distribution in violation of any of the provisions of this chapter are forfeited to the Territory, and may be recovered by information filed, or by an action brought by the attorney general, or by any district or county attorney; in the name of the Territory, upon the filing of the information or complaint, the clerk of the court, or if the suit be in a justice's court, the justice must issue an attachment against the property mentioned in the complaint or information, which attachment has the same force and effect against such property, and is issued in the same manner as attachments issued from the respective courts in civil cases.

Property offered for disposal in lottery forfeited

(2005.) SEC. 175. Every person who lets, or permits to be used, any building or vessel, or any portion thereof, knowing that it is to be used for setting up, managing, or drawing any lottery, or for the purpose of selling or disposing of lottery tickets, is guilty of a misdemeanor.

Letting building for lottery purposes.

CHAPTER X.

GAMING.

SECTION.
2006. Gaming prohibited, penalty.
2007. Permitting gambling in houses owned or rented.
2008. Winning at play by fraudulent means.

SECTION.
2009. Witnesses neglecting or refusing to attend trial.
2010. Witness' privilege.
2011. Duties of prosecuting officer, sheriffs and others.

Gaming prohibited.

(2006.) SEC. 176. Every person who deals, plays, or carries on, opens or causes to be opened, or who conducts, either as owner or employe; whether for hire or not, any game of faro, monte, roulette, lansquenet, rouge et noire, rondo, or any banking game played with cards, dice, or any other device, for money, checks, credit, or any other representative of value is punishable by fine not less than two hundred nor more than one thousand dollars, and shall be imprisoned in the penitentiary until such fine and costs of prosecution are paid, such imprisonment not to exceed one year.

Penalty.

Permitting gambling in houses owned or rented.

(2007.) SEC. 177. Every person who knowingly permits any of the games mentioned in the preceding section to be played, conducted, or dealt in any house owned or rented by such person, in whole or in part, is punishable as provided in the preceding section.

Winning at play by fraudulent means.

(2008.) SEC. 178. Every person who, by any practice, cheat, or device, or false pretense whatsoever, while playing at any game of chance, or while bearing any share in wages played for, or while betting on sides or hands of such play, wins or acquires to himself or another any sum of money or valuable thing, is guilty of a misdemeanor.

Witness neglecting or refusing to attend trial.

(2009.) SEC. 179. Every person duly summoned as a witness for the prosecution, on any proceedings had under this chapter, who neglects or refuses to attend, as required, is guilty of a misdemeanor.

Witness' privilege.

(2010.) SEC. 180. No person otherwise competent as a witness, is disqualified from testifying as such concerning the offense of gaming, on the ground that such testimony may criminate himself; but no prosecution can afterwards be had against him for any offense concerning which he testified.

Duties of prosecuting attorney, sheriffs and others.

(2011.) SEC. 181. Every prosecuting attorney, sheriff, constable, or police officer, must inform against and diligently prosecute persons whom they have reasonable cause to believe offenders against the provisions of this chapter, and every such officer refusing or neglecting so to do, is guilty of a misdemeanor.

CHAPTER XI.

OTHER INJURIES TO PERSONS.

SECTION.
2012. Acts of intoxicated physician.
2013. Willfully poisoning food, medicine, or water.
2014. Mismanagement of steamboats.
2015. Mismanagement of steam boilers.
2016. Counterfeiting trade mark.
2017. Selling goods which bear counterfeited trade mark.
2018. Definition of the phrase "counterfeited trade mark," etc.
2019. "Trade mark" defined.
2020. Refilling casks, etc., bearing trade mark.
2021. Defacing marks upon logs, lumber or wood.

SECTION.
2022. Altering brands.
2023. Cruel treatment of idiots, lunatics, etc.
2024. Refusing to issue or obey writ of habeas corpus.
2025. Reconfining persons discharged upon writ of habeas corpus.
2026. Concealing persons entitled to benefit of habeas corpus.
2027. Inn keepers and carriers refusing to receive guests and passengers.
2028. Selling debased quicksilver.

Acts of intoxicated physician.

(2012.) SEC. 182. Every physician who, in a state of intoxication, does any act as such physician to another person by which the life of such other person is endangered, is guilty of a misdemeanor.

Willfully poisoning food, medicine or water.

(2013.) SEC. 183. Every person who willfully mingles any poison with any food, drink, or medicine, with intent that the same shall be taken by any human being, to his injury, and every person who willfully poisons any spring, well, stream or reservoir of water, is punishable by imprisonment in the penitentiary for a term not less than one nor more than ten years.

Mismanagement of steamboats.

(2014.) SEC. 184. Every captain, or other person having charge of any steamboat used for the conveyance of passengers, or of the boilers and engines thereof, who, from ignorance or gross neglect, or for the purpose of excelling any other boat in speed, creates, or allows to be created, such an undue quantity of steam as to burst or break the boiler, or any apparatus or machinery connected therewith, by which bursting or breaking human life is endangered, is guilty of a misdemeanor.

Mismanagement of steam boilers, etc.

(2015.) SEC. 185. Every engineer or other person having charge of any steam boiler, steam engine, or other apparatus for generating or employing steam, used in any manufactory, railway or other mechanical works, who willfully, or from ignorance, or gross neglect, creates or allows to be created such an undue quantity of steam as to burst or break the boiler, or engine, or apparatus, or cause any other accident whereby human life is endangered, is guilty of a misdemeanor.

Counterfeiting trade mark.

(2016.) SEC. 186. Every person who willfully forges or counterfeits, or procures to be forged or counterfeited, any trade mark usually affixed by any person to his goods, with intent to pass off any goods to which such forged or counterfeited trade mark is affixed or intended to be affixed, as the goods of such person, is guilty of a misdemeanor.

Selling goods which bear counterfeit trade marks.

(2017.) SEC. 187. Every person who sells, or keeps for sale any goods upon or to which any counterfeited trade mark has been affixed, intending to represent such goods as the genuine goods of another, knowing the same to be counterfeited, is guilty of a misdemeanor.

Definition of phrase "counterfeited trade mark," etc.

(2018.) SEC. 188. The phrases "forged trade mark" and "countefeited trade mark," or their equivalents, as used in this chapter, include every alteration or imitation of any trade mark so resembling the original as to be likely to deceive.

"Trade mark" defined.

(2019.) SEC. 189. The phrase "trade mark," as used in the three preceding sections, includes every description of word, letter, device, emblem, stamp, imprint, brand, printed ticket, label, or wrapper, usually affixed by any mechanic, manufacturer, druggist, merchant, or tradesman, to denote any goods to be goods imported, manufactured, produced, compounded, or sold by him, other than any name, word, or expression generally denoting any goods to be of some particular class or description.

Refilling casks, etc., bearing trade mark.

(2020.) SEC. 190. Every person who has or uses any cask, bottle, vessel, case, cover, label, or other thing bearing or having in any way connected with it the duly filed trade mark or name of another, for the purpose of disposing with intent to deceive or defraud, of any article other than that which such cask, bottle, vessel, case, cover, label, or other thing originally contained or was connected with by the owner of such trade mark or name, is guilty of a misdemeanor.

(2021.) SEC. 191. Every person who cuts out, alters or defaces, any mark made upon any log, lumber, or wood, or puts a false mark thereon, with intent to prevent the owner from discovering its identity, is guilty of a misdemeanor.

Defacing mark upon logs, lumber or wood.

(2022.) SEC. 192. Every person who marks or brands, alters or defaces the mark or brand of any horse, mare, gelding, colt, jack, jennet, mule, bull, ox, steer, cow, calf, sheep, goat, hog, shoat, or pig belonging to another, with intent thereby, to steal the same or to prevent identification thereof by the true owner, is punishable by imprisonment in the penitentiary for not less than one nor more than five years.

Altering brands.

(2023.) SEC. 193. Every person guilty of any unnecessarily harsh, cruel, or unkind treatment of, or any neglect of duty towards any idiot, lunatic, or insane person, is guilty of a misdemeanor.

Cruel treatment of idiots, lunatics, etc.

(2024.) SEC. 194. Every officer or person to whom a writ of *habeas corpus* may be directed, who, after service thereof neglects or refuses to obey the command thereof, is guilty of a misdemeanor.

Refusing to issue or obey writ of habeas corpus.

(2025.) SEC. 195. Every person who, either solely or as member of a court, knowingly and unlawfully recommits, imprisons, or restrains of his liberty, for the same cause, any person who has been discharged upon a writ of *habeas corpus*, is guilty of a misdemeanor.

Reconfining persons discharged upon writ of habeas corpus.

(2026.) SEC. 196. Every person having in his custody, or under his restraint or power, any person for whose relief a writ of *habeas corpus* has been issued, who, with the intent to elude the service of such writ or to avoid the effect thereof, transfers such person to the custody of another, or places him under the power or control of another, or conceals or changes the place of his confinement or restraint, or removes him without the jurisdiction of the court or judge issuing the writ, is guilty of a misdemeanor.

Concealing persons entitled to benefit of habeas corpus.

(2027.) SEC. 197. Every person, and every agent or officer of any corporation carrying on business as an inn keeper, or as a common carrier of passengers, who refuses, without just cause or excuse, to receive and entertain any guest, or to receive and carry any passenger; is guilty of a misdemeanor.

Inn keepers and carriers refusing to receive guests and passengers.

Selling debased quicksilver.

(2028.) SEC. 198. Every person who willfully sells, or offers for sale as pure, any debased or adulterated quicksilver, is guilty of a misdemeanor.

TITLE X.

OF CRIMES AGAINST THE PUBLIC HEALTH AND SAFETY.

SECTION.
2029. Death from explosions, etc.
2030. Death from collision on railroad.
2031. Public nuisances defined.
2032. Unequal damage.
2033. Maintaining a nuisance, a misdemeanor.
2034. Establishing or keeping pest houses within cities or villages.
2035. Putting dead animals in streets, rivers, etc.
2036. Keeping gunpowder, etc., unlawfully.
2037. Apothecary omitting to label drugs or labeling them wrongfully.
2038. Putting extraneous substances in packages of goods, usually sold by weight, with intent to increase weight.
2039. Adulterating food, drugs, liquors, etc.
2040. Disposing of tainted food, etc.
2041. Setting woods on fire.
SECTION.
2042. Obstructing attempts to extinguish fires.
2043. Maintaining bridge or ferry without authority.
2044. Engineer of locomotive engine omitting to ring bell when crossing highway.
2045. Intoxication of engineers, conductors, or drivers of locomotives or cars.
2046. Placing passenger cars in front of freight cars.
2047. Violation of duty by employes of roilroad companies.
2048. Exposing persons infected with any contagious disease in a public place.
2049. Frauds practised to affect the market price.
2050. Racing upon highways.
2051. Selling liquor to Indians.
2052. Death from mischievous animals.

Death from explosions, etc.

(2029.) SEC. 199. Every person having charge of any steam boiler or steam engine, or other apparatus for generating or employing steam, used in any manufactory, or on any railroad, or in any vessel, or in any kind of mechanical work, who willfully, or from ignorance or neglect, creates, or allows to be created, such an undue quantity of steam as to burst or break the boiler, engine, or apparatus, or to cause any other accident whereby the death of a human being is produced is punishable by imprisonment in the penitentiary for not less than one nor more than ten years.

Death from collision on railroad.

(2030.) SEC. 200. Every conductor, engineer, brakeman, switchman, or other person having charge, wholly or in part, of any railroad car, locomotive, or train, who willfully or negligently, suffers or causes the same to collide with another car, locomotive, or train, or with any other object or thing, whereby the death of a human being is produced, is punishable by imprisonment in the penitentiary for not less than one nor more than ten years.

Public nuisance defined.

(2031.) SEC. 201. A public nuisance is a crime against the order and economy of the Territory, and consists in unlawfully doing any act, or omitting to perform any duty, which act or omission, either:

First—Annoys, injures, or endangers the comfort, repose, health, or safety of three or more persons; or,

Second—Offends public decency; or,

Third—Unlawfully interferes with, obstructs, or tends to obstruct, or renders dangerous for passage, any lake, stream, canal, basin, or any public park, square, street, or highway; or,

Fourth—In any way renders three or more persons insecure in life, or the use of property.

Unequal damage.

(2032.) SEC. 202. An act which affects three or more persons, in either of the ways specified in the last section, is not less a nuisance, because the extent of damage is unequal.

Maintaining a nuisance a misdemeanor

(2033.) SEC. 203. Every person who maintains or commits any public nuisance, the punishment for which is not otherwise prescribed, or who willfully omits to perform any legal duty relating to the removal of a public nuisance, is guilty of a misdemeanor.

Establishing or keeping pest house in cities or villages.

(2034.) SEC. 204. Every person who establishes or keeps, or causes to be established or kept, within the limits of any city, or village, any pest house, hospital, or place for persons affected with contagious or infectious diseases, is guilty of a misdemeanor.

Putting dead animals in streets, rivers, etc.

(2035.) SEC. 205. Every person who puts the carcass of any dead animal, or the offal from any slaughter pen, corral, or butcher shop, into any river, creek, pond, street, alley, public highway or road in common use, or who attempts to destroy the same by fire, within one-fourth of a mile of any city, or village, is guilty of a misdemeanor.

Keeping gunpowder, etc., unlawfully.

(2036.) SEC. 206. Every person who makes or keeps gunpowder, nitro-glycerine, or other highly explosive substance, within any city or village, or who carries the same through the streets thereof, in any quantity or manner such as is prohibited by law, or by any ordinance of such city or village, is guilty of a misdemeanor.

(2037.) SEC. 207. Every apothecary, druggist, or person

Apothecary omitting to label drugs, or labeling them wrongfully.

carrying on business as a dealer in drugs or medicines, or person employed as clerk or salesman by such person, who in putting up any drugs or medicines, or making up any prescription, or filling any order for drugs or medicines, willfully, negligently, or ignorantly omits to label the same, or puts an untrue label, stamp, or other designation of contents, upon any box, bottle, or other package, containing any drugs or medicines, or substitutes a different article for any article prescribed or ordered, or puts up a greater or less quantity of any article than that prescribed or ordered, or otherwise deviates from the terms of the prescription or order which he undertakes to follow in consequence of which human life or health is endangered, is guilty of a misdemeanor, or if death ensues, is guilty of a felony.

Putting extraneous substances in packages of goods usually sold by weight with intent to increase weight.

(2038.) SEC. 208. Every person who, in putting up any bag, bale, box, barrel, or other package, any hops, cotton, wool, grain, hay, or other goods usually sold in bags, bales, boxes, barrels, or packages by weight, puts in or conceals therein anything whatever, for the purpose of increasing the weight of such bag, bale, box, barrel, or package, is punishable by a fine of twenty-five dollars for each offense.

Adulterating food, drugs, liquors, etc.

(2039.) SEC. 209. Every person who adulterates or dilutes any article of food, drink, drug, medicine, spirituous or malt liquor, or wine, or any article useful in compounding them, with a fraudulent intent to offer the same or cause or permit it to be offered for sale as unadulterated or undiluted, and every person who fraudulently sells, or keeps or offers for sale the same, as unadulterated or undiluted, is guilty of a misdemeanor.

Disposing of tainted food, etc.

(2040.) SEC. 210. Every person who knowingly sells, or keeps or offers for sale, or otherwise disposes of any article of food, drink, drug, or medicine, knowing that the same has become tainted, decayed, spoiled, or otherwise unwholesome or unfit to be eaten or drank, with intent to permit the same to be eaten or drank, is guilty of a misdemeanor.

Setting woods on fire.

(2041.) SEC. 211. Every person who maliciously or negligently sets on fire, or causes or procures to be set on fire, any woods, prairies, grasses, or grain, on any lands, public or private, is guilty of a misdemeanor.

Obstructing attempts to extinguish fire.

(2042.) SEC. 212. Every person who, at the burning of a building disobeys the lawful orders of any public officer or fireman, or offers any resistance to or interference with the lawful efforts of any fireman or company of firemen to extinguish the same, or engages in any disorderly conduct calculated to prevent the same from being extinguished, or who forbids, prevents, or dissuades others from assisting to extinguish the same, is guilty of a misdemeanor.

Maintaining bridge or ferry without authority.

(2043.) SEC. 213. Every person who demands, or receives compensation for the use of any bridge or ferry, or sets up or keeps any road, bridge, ferry, or constructed ford, for the purpose of receiving any remuneration for the use of the same, without the authority of law, is guilty of a misdemeanor.

Engineer of locomotive engine omitting to ring bell when crossing highway.

(2044.) SEC. 214. Every person in charge of a locomotive engine who, before crossing any traveled street, road or highway, omits to cause a bell to ring or steam whistle to sound at the distance of at least eighty rods from the crossing, and up to it, is guilty of a misdemeanor.

Intoxication of engineers, conductors or drivers of locomotives or cars.

(2045.) SEC. 215. Every person who is intoxicated while in charge of a locomotive engine, or while acting as conductor, or driver upon any railroad train or car, whether propelled by steam or drawn by horses, or while acting as train dispatcher or as telegraph operator, receiving or transmitting dispatches in relation to the movement of trains, is guilty of a misdemeanor.

Placing passenger car in front of freight car.

(2046.) SEC. 216. Every person who, in making up or running railroad trains, places or runs, or causes to be placed or run, any freight car in the rear of passenger cars, is guilty of a misdemeanor, and if loss of life or limb results from such placing or running, is guilty, of felony. The term "freight car" as used in this section does not include a baggage, express, or mail car.

Violation of duty by employes of railroad companies.

(2047.) SEC. 217. Every engineer, conductor, brakeman, switch tender, or other officer, agent, or servant of any railroad company who is guilty of any willful violation or omission of his duty as such officer, agent, or servant whereby human life or safety is endangered, the punishment of which is not otherwise prescribed, is guilty of a misdemeanor.

Exposing person infected with any contagious disease in a public place.

(2048.) SEC. 218. Every person who willfully exposes himself or another afflicted with any contagious or infectious disease, in any public place or thoroughfare, except in his necessary removal in a manner the least dangerous to the public health, is guilty of a misdemeanor.

Frauds practised to affect the market price.

(2049.) SEC. 219. Every person who willfully makes or publishes any false statement, spreads any false rumor, or employs any other false or fraudulent means or device, with intent to affect the market price of any kind of property, is guilty of a misdemeanor.

Racing upon highways.

(2050.) SEC. 220. Every person driving any conveyance drawn by horses, upon any public road or way, who causes or suffers his horses to run, with intent to pass another conveyance or to prevent such other from passing his own, is guilty of a misdemeanor.

Selling liquor to Indians.

(2051.) SEC. 221. Every person who sells or furnishes, or causes to be sold or furnished, intoxicating liquors to any Indian, is guilty of a misdemeanor.

Death from mischievous animals.

(2052.) SEC. 222. If the owner of a mischievous animal, knowing its propensities willfully suffers it to go at large, or keeps it without ordinary care, and such animal, while so at large, or while not kept with ordinary care, kills any human being who has taken all the precaution which the circumstances permitted, or which a reasonable person would ordinarily take in the same situation, is guilty of a felony.

TITLE XI.

OF CRIMES AGAINST THE PUBLIC PEACE.

SECTION.
2053. Disturbance of public meetings.
2056. "Riot" defined.
2055. Riot, punishment of.
2054. "Rout" defined.
2057. "Unlawful assembly" defined.
2058. Punishment of rout and unlawful assembly.
2059. Remaining present at place of riot, etc., after warning to disperse.
2060. Magistrates neglecting or refusing to disperse rioters.
2061. Prize fights.

SECTION.
2062. Persons present at prize fights.
2063. Disturbing the peace.
2064. Refusing to disperse upon lawful command.
2065. Exhibiting deadly weapon in rude, etc., manner or using the same unlawfully.
2066. Forcible entry and detainer.
2067. Returning to take possession of lands after being removed by legal proceedings.

Disturbance of public meetings.

(2053.) SEC. 223. Every person who, without authority of law, willfully disturbs or breaks up any assembly or meeting, not unlawful in its character, is guilty of a misdemeanor.

Riot defined.

(2054.) SEC. 224. Any use of force or violence, disturbing the public peace, or any threat to use such force or violence, if accompanied by immediate power of execution, by two or more persons acting together and without authority of law, is a riot.

Riot, punishment of.

(2055.) SEC. 225. Every person who participates in any riot, is punishable by imprisonment in the penitentiary not exceeding two years, or by fine not exceeding one thousand dollars, or by both.

"Rout" defined.

(2056.) SEC. 226. Whenever two or more persons, assembled and acting together, make any attempt or advance towards the commission of an act which would be a riot if actually committed, such assembly is a rout.

"Unlawful assembly" defined.

(2057.) SEC. 227. Whenever two or more persons assemble together to do an unlawful act, and separate without doing or advancing toward it or do a lawful act in a violent, boisterous or tumultuous manner, such assembly is an unlawful assembly.

Punishment of rout.

(2058.) SEC. 228. Every person who participates in any rout or unlawful assembly, is guilty of a misdemeanor.

Remaining present at place of riot, etc., after warning to disperse.

(2059.) SEC. 229. Every person remaining present at the place of any riot, rout, or unlawful assembly, after the same has been lawfully warned to disperse, except public officers andpersons assisting them in attempting to disperse the same, is guilty of a misdemeanor.

Magistrate neglecting or refusing to disperse rioters.

(2060.) SEC. 230. If a magistrate or officer, having notice of an unlawful or riotous assembly, mentioned in this chapter, neglects to proceed to the place of assembly, or as near thereto as he can with safety, and to exercise the authority with which he is invested for suppressing the same and arresting the offenders, he is guilty of a misdemeanor.

Prize fights.

(2061.) SEC. 231. Every person who engages in, instigates, encourages, or promotes any ring or prize fight, or any other premeditated fight or contention (without deadly weapons), either as principal, aid, second, umpire, surgeon, or otherwise, is punishable by imprisonment in the penitentiary not exceeding two years.

Persons present at prize fights.

(2062.) SEC. 232. Every person willfully present as a spectator at any fight or contention mentioned in the preceding section, is guilty of a misdemeanor.

Disturbing the peace.

(2063.) SEC. 233. Every person who maliciously and willfully disturbs the peace or quiet of any neighborhood, family, or person, by loud or unusual noise, or by tumultuous, or offensive conduct, or by threatening, traducing, quarreling, challenging to fight, or fighting, is punishable by fine not exceeding two hundred dollars, or by imprisonment in the county jail not exceeding two months.

Refusing to disperse upon lawful command.

(2064.) SEC. 234. If two or more persons assemble for the purpose of disturbing the public peace, or committing any unlawful act, and do not disperse on being desired or commanded so to do by a public officer, the persons so offending are severally guilty of a misdemeanor.

Exhibiting deadly weapons in rude, etc., manner, or using the same unlawfully.

(2065.) SEC. 235. Every person who, not in necessary self defense, in the presence of two or more persons, draws or exhibits any deadly weapon in a rude, angry, and threatening manner, or who, in any manner, unlawfully uses the same in any fight or quarrel, is guilty of a misdemeanor.

Forcible entry and detainer.

(2066.) SEC. 236. Every person using or procuring, encouraging or assisting another to use, any force or violence in entering upon or detaining any lands or other possessions of another, except in the cases and in the manner allowed by law, is guilty of a misdemeanor.

Returning to take possession of lands after being removed by legal proceedings.

(2067.) SEC. 237. Every person who has been removed from any lands by process of law, or who has removed from any lands pursuant to the lawful adjudication or direction of any court, tribunal, or officer, and who afterwards unlawfully returns to settle, reside upon, or take possession of such lands, is guilty of a misdemeanor.

TITLE XII.

OF CRIMES AGAINST THE REVENUE AND PROPERTY OF THIS TERRITORY.

SECTION.
2068. Embezzlement and falsification of accounts by public officers.
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(2068.) SEC. 238. Every officer of this Territory, or of any county, city, precinct, or district of this Territory and every other person charged with the receipt, safe keeping, transfer, or disbursement of public moneys, who either:

Embezzlement and falsification of accounts by public officers

First—Without authority of law, appropriates the same or any portion thereof to his own use, or to the use of another; or,

Second—Loans the same or any portion thereof; or,

Third—Fails to keep the same in his possession until disbursed or paid out by authority of law; or,

Fourth—Unlawfully deposits the same or any portion thereof in any bank, or with any banker or other person; or,

Fifth—Knowingly keeps any false account, or makes any false entry or erasure in any account of or relating to the same; or,

Sixth—Fraudulently alters, falsifies, conceals, destroys or obliterates any such account; or,

Seventh—Willfully refuses or omits to pay over, on demand any public moneys in his hands, upon the presentation of a draft, order, or warrant drawn upon such moneys by competent authority; or,

Eighth—Willfully omits to transfer the same, when such transfer is required by law; or,

Ninth—Willfully omits or refuses to pay over to any officer or person authorized by law to receive the same, any money received by him under any duty imposed by law so to pay over the same;

Is guilty of a felony.

Officers neglecting to pay over public moneys.

(2069.) SEC. 239. Every officer charged with the receipt, safe keeping or disbursement of public moneys, who neglects or fails to keep and pay over the same, in the manner prescribed by law, is guilty of felony.

"Public moneys" as used in the preceding section defined.

(2070.) SEC. 240. The phrase "public moneys," as used in the two preceding sections, includes all bonds and evidences of indebtedness, and all moneys belonging to the Territory, or any city, county, precinct, or district therein, and all moneys, bonds, and evidences of indebtedness received or held by Territorial, county, district, city, or precinct officers in their official capacity.

Failure to pay over fines and forfeitures received, a misdemeanor

(2071.) SEC. 241. If any clerk, justice of the peace, sheriff, or constable, who receives any fine or forfeiture, refuses or neglects to pay over the same according to law and within thirty days after the receipt thereof, he is guilty of a misdemeanor.

(2072.) SEC. 242. Every person who willfully obstructs

Obstructing officers in collecting revenue.

or hinders any public officer from collecting any revenue, taxes, or other sums of money, in which the people of this Territory are interested, and which such officer is by law empowered to collect, is guilty of a misdemeanor.

Refusing to give assessor list of property, or giving false name.

(2073.) SEC. 243. Every person who unlawfully refuses, upon demand to give to any school district, city or county assessor a list of his property subject to taxation, or to swear to such list, or who gives a false name or fraudulently refuses to give his true name to any assessor, when demanded by such assessor, in the discharge of his official duties, is guilty of a misdemeanor.

Delivering receipts for poll taxes, other than prescribed by law, or collecting poll taxes, etc., without giving the receipt prescribed by law.

(2074.) SEC. 244. Every person who uses or gives any receipt, except that prescribed by law, as evidence of the payment of any poll tax, road tax, or license of any kind, or who receives payment of such tax or license without delivering the receipt prescribed by law, is guilty of a misdemeanor.

Refusing to give name of persons in employment, etc.

(2075.) SEC. 245. Every person who, when requested by the assessor, or collector of taxes or licenses refuses to give to such assessor or collector, the name and residence of each man in his employment, or to give such assessor or collector, access to the building or place where such men are employed, is guilty of a misdemeanor.

Carrying on business without license.

(2076.) SEC. 246. Every person who commences, or carries on any business, trade, profession or calling, for the transaction or carrying on of which a license is required by any law of this Territory, or by any county regulation without taking out the license required by law or by the county regulation, is guilty of a misdemeanor.

TITLE XIII.

OF CRIMES AGAINST PROPERTY.

CHAPTER I. Arson.
CHAPTER II. Burglary and housebreaking.
CHAPTER III. Having possession of burglarious instruments and deadly weapons.
CHAPTER IV. Forging and counterfeiting.
CHAPTER V. Larceny.
CHAPTER VI. Embezzlement.
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CHAPTER VIII. False personation and cheats.
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CHAPTER I.

ARSON.

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2078. "Building" defined.
2079. "Inhabited building" defined.
2080. "Night time" defined.
2081. "Burning" defined.
SECTION.
2082. Ownership of building.
2083. Degrees of arson.
2084. Arson of the first degree, arson of the second degree.
2085. Punishment of arson.

Arson defined

(2077.) SEC. 247. Arson is the willful and malicious burning of a building with intent to destroy it.

"Building" defined.

(2078.) SEC. 248. Any house, edifice, structure, vessel, or other erection, capable of affording shelter for human beings, or appurtenant to or connected with an erection so adapted, is a "building," within the meaning of this chapter.

"Inhabited building" defined.

(2079.) SEC. 249. Any building which has usually been occupied by any person lodging therein at night is an "inhabited building," within the meaning of this chapter.

"Night time" defined.

(2080.) SEC. 250. The phrase "night time" as used in this chapter, means the period between sunset and sunrise.

"Burning" defined.

(2081.) SEC. 251. To constitute a burning, within the meaning of this chapter, it is not necessary that the building set on fire shall have been destroyed. It is sufficient that fire is applied so as to take effect upon any part of the substance of the building.

Ownership of building.

(2082.) SEC. 252. To constitute arson it is not necessary that a person other than the accused should have had ownership in the building set on fire. It is sufficient, that at the time of the burning another person was rightfully in possession of, or was actually occupying such building, or any part thereof.

Degrees of arson.

(2083.) SEC. 253. Arson is divided into two degrees.

Arson of the first degree; arson of the second degree

(2084.) SEC. 254. Maliciously burning in the night time an inhabited building in which there is at the time some human being is arson in the first degree, all other kinds of arson are of the second degree.

Punishment of arson.

(2085.) SEC. 255. Arson is punishable by imprisonment in the penitentiary as follows:

First—Arson in the first degree, for not less than two years, nor more than fifteen years.

Second—Arson in the second degree, for not less than one nor more than ten years.

CHAPTER II.

BURGLARY AND HOUSEBREAKING.

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2086. Burglary defined.
2087. Punishment of burglary.
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SECTION.
2089. Punishment of housebreaking.
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Burglary defined.

(2086.) SEC. 256. Every person who, in the night time, forcibly breaks and enters, or without force enters through any open door, window, or other aperture, any house, room, apartment, or tenement, or any tent, vessel, water craft, or railroad car, with intent to commit larceny, or any felony is guilty of burglary.

Punishment of burglary.

(2087.) SEC. 257. Burglary is punishable by imprisonment in the penitentiary not less than one nor more than ten years.

Housebreaking defined.

(2088.) SEC. 258. Every person who, in the day time, enters any dwelling house, shop, warehouse, store, mill, barn, stable, outhouse, other building, vessel, or railroad car, with intent to steal or to commit any felony whatever therein, is guilty of housebreaking.

Punishment of housebreaking.

(2089.) SEC. 259. Housebreaking is punishable by imprisonment in the penitentiary not less than six months nor more than three years.

"Night time" defined.

(2090.) SEC. 260. The phrase "night time," as used in this chapter, means the period between sunset and sunrise.

CHAPTER III.

HAVING POSSESSION OF BURGLARIOUS INSTRUMENTS AND DEADLY WEAPONS.

SECTION.
2091. Having possession of any instrument with intent to commit burglary.
2092. Having possession of deadly weapon with intent to commit assault.

Having possession of any instrument with intent to commit burglary.

(2091.) SEC. 261. Every person having upon him a picklock, crowkey, bit, other instrument or tool, with intent feloniously to break or enter into any building, is guilty of a misdemeanor.

Having possession of deadly weapon, etc.

(2092.) SEC. 262. Every person having upon him any deadly weapon, with intent to assault another, is guilty of a misdemeanor.

CHAPTER IV.

FORGING AND COUNTERFEITING.

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2093. Forgery of wills, conveyances, notes, bonds, etc.; uttering forged notes, bonds, etc.; forgery of records and official returns.
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2100. Counterfeiting coin, bullion, etc.
2101. Punishment of counterfeiting.
2102. Possessing or receiving counterfeit coin, bullion, etc.
2103. Making or possessing counterfeit dies or plates.

Forging of wills, conveyances, notes, bonds, etc.

(2093.) SEC. 263. Every person who, with intent to defraud another, falsely makes, alters, forges, or counterfeits any charter, letters patent, deed, lease, indenture, writing obligatory, will, testament, codicil, annuity, bond, covenant, bank bill or note, post note, check, draft, bill of exchange, contract, promissory note, due bill for the payment of money or property, receipt for money or property, passage ticket, power of attorney, or any certificate of any share, right or interest in the stock of any corporation or association, or any auditor's warrant for the payment of money at the treasury, county or city order or warrant, or request for the payment of money, or the delivery of goods or chattels of any kind, or for the delivery of any instrument of writing or acquittance, release, or receipt for money or goods, or any acquittance, release or discharge for any debt, account, suit, action, demand, or other thing, real or personal, or any transfer or assurance of money, certificates of shares of stock, goods, chattels, or other property whatever, or any letter of attorney, or other power to receive money, or to receive or transfer certificates of shares of stock or annuities, or to let, lease, dispose of, alien, or convey any goods, chattels, lands, or tenements, or other estate real or personal, or any acceptance or endorsement of any bill of exchange, promissory note, draft, order, or assignment of any bond, writing obligatory, or promissory note for money or other property, or counterfeits or forges the seal or handwriting of another; or utters, publishes, passes, or attempts to pass, as true and genuine, any of the above named false, altered, forged, or counterfeited matters, as above specified and described, knowing the same to be false, altered, forged, or counterfeited with intent to prejudice, damage, or defraud any person; or who with intent to defraud, alters, corrupts, or falsifies any record of any will, codicil, conveyance, or other instrument, the record of which is by law evidence, or any record of any judgment of a court, or the return of any officer, to any process of any court, is guilty of forgery.

Uttering forged notes, bonds, etc.

Forging of records and official returns.

Making false entries in records or returns.

(2094.) SEC. 264. Every person who, with intent to defraud another, makes, forges, or alters any entry in any book of records, or any instrument purporting to be any record or return specified in the preceding section, is guilty of forgery.

(2095.) SEC. 265. Every person who, with intent to defraud another, forges, or counterfeits the seal of this Territory, the seal of any public officer authorized by law, the seal of any court of record, or the seal of any corporation, or any other public seal authorized or recognized by the laws of this Territory, or of any State, government or country, or who falsely makes, forges, or counterfeits any impression purporting to be an impression of any such seal, or who has in his possession any such counterfeited seal or impression thereof, knowing it to be counterfeited, and willfully conceals the same, is guilty of forgery.

Forging of public and corporate seals.

(2096.) SEC. 266. Forgery is punishable by imprisonment in the penitentiary for not less than one nor more than ten years.

Punishment of forgery.

(2097.) SEC. 267. Every person who knowingly and willfully sends by telegraph to any person a false or forged message, purporting to be from such telegraph office, or from any other person, or who willfully delivers, or causes to be delivered to any person any such message falsely purporting to have been received by telegraph, or who furnishes or conspires to furnish, or causes to be furnished to any agent, operator, or employe, to be sent by telegraph or to be delivered, any such message, knowing the same to be false or forged, with the intent to deceive, injure or defraud another, is punishable by imprisonment in the penitentiary not exceeding five years, or in the county jail not exceeding one year, or by fine not exceeding one thousand dollars, or by both fine and imprisonment.

Forging telegraphic messages.

(2098.) SEC. 268. Every person who has in his possession, or receives from another person, any forged promissory note or bank bill, or bills, for the payment of money or property, with the intention to pass the same, or to permit, cause, or procure, the same to be uttered or passed, with the intention to defraud any person, knowing the same to be forged or counterfeited, or has or keeps in his possession any blank or unfinished note or bank bill made in the form or similitude of any promissory note or bill for payment of money or property, made to be issued by any incorporated bank or banking company, with intention to fill up and complete such blank and unfinished note or bill, or to permit, or cause, or procure the same to be filled up and completed in order to utter or pass the same, or to permit, or cause, or procure the same to be uttered or passed, to defraud any person, is punishable by imprisonment in the penitentiary for not less than one nor more than ten years.

Passing or receiving forged notes.

(2099.) SEC. 269. Every person who makes, passes, Making, passing or uttering fictitious bills, etc.

utters, or publishes, with intention to defraud any other person, or who, with the like intention, attempts to pass, utter, or publish, or who has in his possession, with like intent to utter, pass, or publish any fictitious bill, note, or check, purporting to be the bill, note, or check, or other instrument in writing for the payment of money or property of some bank, corporation, co-partnership, or individual, when, in fact, there is no such bank, corporation, co-partnership, or individual in existence, knowing the bill, note, check, or instrument in writing to be fictitious, is punishable by imprisonment in the penitentiary for not less than one nor more than ten years.

Counterfeiting coin, bullion, etc.

(2100.) SEC. 270. Every person who counterfeits any of the species of gold or silver coin current in this Territory, or any kind or species of gold dust, gold or silver bullion, or bars, lumps, pieces, or nuggets, or who sells, passes, or gives in payment such counterfeited coin, dust, bullion, bars, lumps, pieces, or nuggets, or permits, causes or procures the same to be sold, uttered, or passed, with intention to defraud any person, knowing the same to be counterfeited, is guilty of counterfeiting.

Punishment of counterfeiting.

(2101.) SEC. 271. Counterfeiting is punishable by imprisonment in the penitentiary for not less than one nor more than ten years.

Possessing or receiving counterfeit coin, bullion, etc.

(2102.) SEC. 272. Every person who has in his possession, or receives for any other person, any counterfeited gold or silver coin of the species current in this Territory, or any counterfeit gold dust, gold or silver bullion or bars, lumps, pieces, or nuggets, with the intention to sell, utter, put off, or pass the same, or permits, causes, or procures the same to be sold, uttered, or passed, with intention to defraud any person, knowing the same to be counterfeited, is punishable by imprisonment in the penitentiary not less than one nor more than ten years.

Making or possessing counterfeit dies or plates.

(2103.) SEC. 273. Every person who makes, or knowingly has in his possession any die, plate, or any apparatus, paper, metal, machine, or other thing whatever, made use of in counterfeiting, coin current in this Territory, or in counterfeiting gold dust, gold or silver bars, bullion, lumps, pieces, or nuggets, or in counterfeiting bank notes or bills, is punishable by imprisonment in the penitentiary not less than one nor more than ten years; and all such dies, plates, apparatus, paper, metal, or machine, intended for the purpose aforesaid, must be destroyed.

CHAPTER V.

LARCENY.

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2117. Stealing gas.
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(2104.) SEC. 274. Larceny is the felonious stealing, taking, carrying, leading, or driving away the personal property of another.

Larceny defined.

(2105.) SEC. 275. Every person who shall feloniously steal, take, and carry away, or attempt to take, steal, and carry away from any mining claim, tunnel, sluice, under current, riffle box, or sulphuret machine, any gold dust, amalgam, or quicksilver, the property of another, shall be deemed guilty of larceny.

Larceny from mining camp, tunnel, etc.

(2106.) SEC. 276. Every person who finds lost property under circumstances which give him knowledge of a means of inquiry as to the true owner, and who appropriates such property to his own use, or to the use of another person not entitled thereto, without first making reasonable and just efforts to find the owner, and restore the property to him, is guilty of larceny.

Larceny of lost property.

(2107.) SEC. 277. Larceny is divided into two degrees, the first of which is termed grand larceny; the second, petit larceny.

Grand and petit larceny.

(2108.) SEC. 278. Grand larceny is larceny committed in either of the following cases:

Grand larceny defined.

First—When the property taken is of a value exceeding fifty dollars;

Second—When the property is taken from the person of another;

Third—When the property taken is a horse, mare, gelding, cow, steer, ox, bull, calf, mule, jack, jenny, goat, or sheep;

Petit larceny.

Fourth—Larceny in other cases is petit larceny.

Punishment of grand larceny.

(2109.) SEC. 279. Grand larceny is punishable by imprisonment in the penitentiary for not less than one nor more than ten years.

Punishment of petit larceny.

(2110.) SEC. 280. Petit larceny is punishable by fine not exceeding three hundred dollars, or by imprisonment in the county jail not exceeding six months, or both.

Larceny of written instruments.

(2111.) SEC. 281. If the thing stolen consists of any evidence of debt, or other written instrument, the amount of money due thereupon, or secured to be paid thereby, and remaining unsatisfied, or which in any contingency might be collected thereon, or the value of the property the title to which is shown thereby, or the sum which might be recovered in the absence thereof, is the value of the thing stolen.

Value of passage tickets.

(2112.) SEC. 282. If the thing stolen is any ticket or other paper or writing entitling or purporting to entitle the holder or proprietor thereof to a passage upon any railroad or vessel or other public conveyance, the price at which tickets entitling a person to a like passage are usually sold by the proprietors of such conveyance, is the value of such ticket, paper, or writing.

Written instruments completed but not delivered.

(2113.) SEC. 283. All the provisions of this chapter apply where the property taken is an instrument for the payment of money, evidence of debt, public security, or passage ticket, completed and ready to be issued or delivered, although the same has never been issued or delivered by the makers thereof to any person as a purchaser or owner.

Severing and removing part of the realty, declared larceny.

(2114.) SEC. 284. The provisions of this chapter apply where the thing taken is any fixture or part of the realty, and is severed at the time of the taking, in the same manner as if the thing had been severed by another person at some previous time.

Receiver of stolen property.

(2115.) SEC. 285. Every person who for his own gain, or to prevent the owner from again possessing his property, buys or receives any personal property, of the value of fifty dollars, knowing the same to have been stolen, is punishable by imprisonment in the penitentiary not exceeding five years; if the value of the property so bought or received be less than fifty dollars, he is guilty of a misdemeanor: *Provided*, that if such property so bought or received be a horse, mare, gelding, cow, steer, ox, bull, calf, mule, jack, jenny, goat or sheep, he is guilty of a felony.

(2116.) SEC. 286. Every person who in another State or country steals the property of another, or receives such property knowing it to have been stolen, and brings the same into this Territory may be convicted and punished in the same manner as if such larceny or receiving had been committed in this Territory. Larceny committed and stolen property received out of this Territory.

(2117.) SEC. 287. Every person who, with intent to injure or defraud makes or causes to be made any pipe, tube, or other instrument and connects the same, or causes it to be connected, with any main, service pipe or other pipe for conducting or supplying illuminating gas, in such manner as to supply illuminating gas to any burner or orifice, by or at which illuminating gas is consumed, around or without passing through the meter provided for the measuring and registering the quantity consumed, or in any other manner so as to evade payment therefor, and every person who, with like intent, injures or alters any gas meter or obstructs its action, is guilty of a misdemeanor. Stealing gas.

(2118.) SEC. 288. Every person who, with intent to injure or defraud, connects or causes to be connected, any pipe, tube, or other instrument, with any main, service pipe, or other pipe, or conduit or flume, for conducting water, for the purpose of taking water from such main, service pipe, conduit or flume, without the knowledge of the owner thereof, and with intent to evade payment therefor is guilty of a misdemeanor. Stealing water.

(2119.) SEC. 289. Every person who saves from fire, or from a building endangered by fire, any property, and for two days thereafter corruptly neglects to notify the owner or city marshal, or sheriff of the county, thereof, is guilty of a felony. Larceny of goods saved from fire.

CHAPTER VI.

EMBEZZLEMENT.

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2120. "Embezzlement" defined.
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2126. Distinct act of taking.
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2127. Evidence of debt undelivered may be subject of embezzlement.
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2129. Punishment for embezzlement.

Embezzlement defined.

(2120.) SEC. 290. Embezzlement is the fraudulent appropriation of property by a person to whom it has been entrusted.

When officer, etc., of any association guilty of embezzlement.

(2121.) SEC. 291. Every officer, director, trustee, clerk, servant, or agent of any association, society or corporation (public or private), who fraudulently appropriates to any use or purpose not in the due and lawful execution of his trust, any property which he has in his possession or under his control by virtue of his trust, or secretes it with a fraudulent intent to appropriate it to such use or purpose, is guilty of embezzlement.

When carrier or other person having property for transportation for hire, guilty of embezzlement.

(2122.) SEC. 292. Every carrier or other person having under his control personal property for the purpose of transportation for hire, who fraudulently appropriates it to any use or purpose inconsistent with the safe keeping of such property and its transportation according to his trust, is guilty of embezzlement, whether he has broken the package in which such property is contained, or has otherwise separated the items thereof, or not.

When trustee, banker, etc., guilty of embezzlement.

(2123.) SEC. 293. Every trustee, banker, merchant, broker, attorney, agent, assignee in trust, executor, administrator, or collector, or person otherwise entrusted with or having in his control property for the use of any other person, who fraudulently appropriates it to any use or purpose not in the due and lawful execution of his trust, or secretes it with a fraudulent intent to appropriate it to such use or purpose, is guilty of embezzlement.

When bailee, tenant, or lodger guilty of embezzlement.

(2124.) SEC. 294. Every person entrusted with any property as bailee, tenant, or lodger, or with any power of attorney for the sale or transfer thereof, who fraudulently converts the same or the proceeds thereof to his own use, or secretes it or them with a fraudulent intent to convert to his use, is guilty of embezzlement.

When clerk, agent or servant guilty of embezzlement.

(2125.) SEC. 295. Every clerk, agent, or servant of any person who fraudulently appropriates to his own use, or secretes with a fraudulent intent to appropriate to his own use any property of another which has come into his control or care by virtue of his employment as such clerk, agent, or servant, is guilty of embezzlement.

Distinct act of taking.

(2126.) SEC. 296. A distinct act of taking is not necessary to constitute embezzlement.

Evidence of debt undelivered may be subject of embezzlement.

(2127.) SEC. 297. Any evidence of debt, negotiable by delivery only, and actually executed, is the subject of embezzlement, whether it has been delivered or issued as a valid instrument or not.

Claim of title a ground of defense.

(2128.) SEC. 298. Upon any indictment for embezzlement it is a sufficient defense that the property was appropriated openly and avowedly, and under a claim of title preferred in good faith, even though such claim is untenable.

Punishment of embezzlement.

(2129.) SEC. 299. Every person guilty of embezzlement is punishable in the manner prescribed for feloniously stealing property of the value of that embezzled, and where the property embezzled is an evidence of debt or right of action, the sum due upon it, or secured to be paid by it, shall be taken as its value.

CHAPTER VII.

EXTORTION.

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2130. "Extortion" defined.
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2133. Punishment of extortion committed under color of official right.
2134. Obtaining signature by means of threats.

SECTION.
2135. Sending threatening letters with intent to extort money, etc.
2136. Attempts to extort money or property by means of verbal threats.
2137. Officers of railroad companies making overcharges.

"Extortion" defined.

(2130.) SEC. 300. Extortion is the obtaining of property from another, with his consent, induced by a wrongful use of force or fear, or under color of official right.

What threats may constitute extortion

(2131.) SEC. 301. Fear, such as will constitute extortion, may be induced by a threat, either:

First—To do an unlawful injury to the person or property of the individual threatened, or to any relative of his, or member of his family; or, Second—To accuse him, or any relative of his, or member of his family, of any crime; or,

Third—To expose, or impute to him or them any deformity or disgrace; or,

Fourth—To expose any secret affecting him or them.

Punishment of extortion in certain cases.

(2132.) SEC. 302. Every person who exorts any money or other property from another, under circumstances not amounting to robbery, by means of force, or any threat, such as is mentioned in the preceding section, is punishable by imprisonment in the penitentiary not exceeding three years.

Punishment of extortion committed under color of official right.

(2133.) SEC. 303. Every person who commits any extortion under color of official right, in cases for which a different punishment is not prescribed in this code, is guilty of a misdemeanor.

Obtaining signature by means of threats.

(2134.) SEC. 304. Every person who by any extortionate means, obtains from another his signature to any paper or instrument, whereby, if such signature were freely given, any property would be transferred; or any debt, demand, charge, or right of action created, is punishable in the same manner as if the actual delivery of such debt, demand, charge, or right of action were obtained.

Sending threatening letters with intent to extort money, etc.

(2135.) SEC. 305. Every person who, with intent to extort any money or other property from another, sends or delivers to any person any letter or other writing, whether subscribed or not, expressing or implying, or adapted to imply, any threat such as is specified in section three hundred and one is punishable in the same manner as if such money or property were actually obtained by means of such threat.

Attempts to extort money or property by means of verbal threats

(2136.) SEC. 306. Every person who unsuccessfully attempts, by means of any verbal threat, such as is specified in section three hundred and one, to extort money or other property from another, is guilty of a misdemeanor.

Officers of railroad companies making overcharges.

(2137.) SEC. 307. Every officer, agent, or employe of a railroad company who asks or receives a greater sum than is allowed by law for the carriage of passengers or freight, is guilty of a misdemeanor.

CHAPTER VIII.

FALSE PERSONATION AND CHEATS.

SECTION.
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2140. Receiving property in false character.
SECTION.
2141. Fraudulent conveyances.
2142. Obtaining money by false pretenses.

(2138.) SEC. 308. Every person who falsely personates another, and in such assumed character marries or pretends to marry, or to sustain the marriage relation towards another, with or without the connivance of such other, is guilty of a felony. Marrying under false personation.

(2139.) SEC. 309. Every person who falsely personates another and in such assumed character, either: Falsely personating another in other cases.

First—Becomes bail or surety for any party in any proceeding whatever, before any court or officer authorized to take such bail or surety; or,

Second—Verifies, publishes, acknowledges or proves, in the name of another person, any written instrument, with intent that the same may be recorded, delivered, and used as true; or,

Third—Does any other act whereby, if it were done by the person falsely personated, he might, in any event, become liable to any suit or prosecution, or to pay any sum of money, or to incur any charge, forfeiture, or penalty, or whereby any benefit might accrue to the party personating, or to any other person;

Is punishable by imprisonment in the county jail not exceeding one year or by fine not exceeding one thousand dollars; or by both.

(2140.) SEC. 310. Every person who falsely personates another, and in such assumed character receives any money or property, knowing that it is intended to be delivered to the individual so personated, with intent to convert the same to his own use, or to that of another person, or to deprive the true owner thereof, is punishable in the same manner and to the same extent as for larceny of the money or property so received. Receiving property in a false character.

Fraudulent conveyances.

(2141.) SEC. 311. Every person who is a party to any fraudulent conveyance of any lands, tenements, or hereditaments, goods, or chattels, or any right or interest issuing out of the same, or to any bond, suit, judgment, or execution, contract, or conveyance, had, made or contrived with intent to deceive and defraud others, or to defeat, hinder, or delay creditors or others of their just debts, damages, or demands, is guilty of a misdemeanor.

Obtaining money by false pretenses.

(2142.) SEC. 312. Every person who knowingly and designedly, by false or fraudulent representations or pretenses, defrauds any other person of money or property is punishable by imprisonment in the county jail, not exceeding one year, and by fine not exceeding three times the value of the money or property so obtained.

CHAPTER IX.

FRAUDULENT DESTRUCTION OF PROPERTY INSURED.

SECTION.
2143. Burning or destroying property insured.

SECTION.
2144. Presenting false proofs in support of a claim upon policy of insurance.

Burning or destroying property insured.

(2143.) SEC. 313. Every person who willfully burns, or in any other manner injures or destroys any property which is at the time insured against loss or damage by fire or by any other casualty, with intent to defraud or prejudice the insurer, whether the same be the property of or in possession of such person or of any other, is punishable by imprisonment in the penitentiary not less than one nor more than ten years.

Presenting false proofs in support of a claim upon policy of insurance.

(2144.) SEC. 314. Every person who presents or causes to be presented any false or fraudulent claim, or any proof in support of any such claim, upon any contract of insurance for the payment of any loss, or who prepares, makes, or subscribes any account, certificate of survey, affidavit, or proof of loss, or other book, paper, or writing with intent to present or use the same, or to allow it to be presented or used in support of any such claim, is punishable by imprisonment in the penitentiary not exceeding three years, or by a fine not exceeding one thousand dollars, or by both.

CHAPTER X.

FALSE WEIGHTS AND MEASURES.

SECTION.
2145. "False weight" and "measure" defined.
2146. Using false weights and measures.
SECTION.
2147. Stamping false weight, measure, or tare on casks or packages.

"False weight" and "measure" defined.

(2145.) SEC. 315. A false weight or measure is one which does not conform to the standard established by the laws of the United States of America.

Using false weights or measures.

(2146.) SEC. 316. Every person who uses any weight or measure, knowing it to be false, by which use another is defrauded or otherwise injured, is guilty of a misdemeanor.

Stamping false weight, measure or tare on casks or packages.

(2147.) SEC. 317. Every person who knowingly marks or stamps false or short weight or measure, or false tare, on any cask or package, or car or knowingly sells or offers for sale, any cask or package or other article so marked, is guilty of a misdemeanor.

CHAPTER XI.

FRAUDULENT INSOLVENCIES BY CORPORATIONS AND OTHER FRAUDS IN THEIR MANAGEMENT.

SECTION.
2148. Fraud in subscription for stock of corporation.
2149. Frauds in procuring organization of corporation or increasing its capital.
2150. Unauthorized use of name in prospectus, etc.
2151. Misconduct of directors of stock corporations.
2152. Savings bank officer overdrawing his account.
2153. Receiving deposits in insolvent banks.
2154. Frauds in keeping accounts in books of corporations.
2155. Officer of corporation publishing false reports of its condition.
SECTION.
2156. Officer of corporation to permit inspection of its books.
2157. Officer of railroad company contracting debt in its behalf exceeding its available means.
2158. Debt contracted in violation of last section not invalid.
2159. Director of a corporation presumed to have knowledge of its affairs.
2160. Director present at a meeting, when presumed to have assented to proceedings.
2161. Director absent from meeting, when presumed to have assented to proceedings.
2162. Foreign corporations.
2163. "Director" defined.

Frauds in subscription for stock corporations.

(2148.) SEC. 318. Every person who signs the name of a fictitious person to any subscription for or agreement to take stock in any corporation existing or proposed, and every person who signs to any subscription or agreement the name of any person, knowing that such person has not means or does not intend in good faith to comply with all the terms thereof, or under any understanding or agreement that the terms of such subscription or agreement are not to be complied with or enforced, is guilty of a misdemeanor.

Frauds in procuring organization of corporation or increasing its capital stock.

(2149.) SEC. 319. Every officer, agent, or clerk of any corporation, or of any persons proposing to organize a corporation, or to increase the capital stock of any corporation, who knowingly exhibits any false, forged, or altered book, paper, voucher, security, or other instrument of evidence to any public officer or board authorized by law to examine the organization of such corporation, or to investigate its affairs, or to be allowed an increase of its capital, with intent to deceive such officer or board in respect thereto, is punishable by imprisonment in the penitentiary not less than one nor more than ten years.

Unauthorized use of name in prospectus, etc.

(2150.) SEC. 320. Every person who without being authorized so to do, subscribes the name of another to or inserts the name of another in any prospectus, circular, or other advertisement, or announcement of any corporation or joint stock association, existing or intended to be formed, with intent to permit the same to be published, and thereby to lead persons to believe that the person whose name is so subscribed is an officer, agent, member or promoter of such corporation or association, is guilty of a misdemeanor.

Misconduct of directors of stock corporations.

(2151.) SEC. 321. Every director of any stock corporation who concurs in any vote or act of the directors of such corporation or any of them, by which it is intended either:

First—To make any dividend, except from the surplus profits arising from the business of the corporation, and in the cases and manner allowed by law; or,

Second—To divide, withdraw, or in any manner, except as provided by law, pay to the stockholders, or any of them, any part of the capital stock of the corporation; or,

Third—To discount or receive any note or other evidence of debt in payment of any installment actually called in and required to be paid, or with the intent to provide the means of making such payment; or,

Fourth—To receive or discount any note or other evidence of debt, with the intent to enable any stockholder to withdraw any part of the money paid in by him, or his stock; or,

Fifth—To receive from any other stock corporation, in exchange for the shares, notes, bonds, or other evidences of debt of their own corporation, shares of the capital stock of such other corporation, or notes, bonds or other evidences of debt issued by such corporation;

Is guilty of a misdemeanor.

Savings bank officer overdrawing his account.

(2152.) SEC. 322. Every officer, agent, teller or clerk of any savings bank, who knowingly overdraws his account with such bank, and thereby wrongfully obtains the money, note, or funds of such bank, is guilty of a misdemeanor.

Receiving deposits in insolvent banks.

(2153.) SEC. 323. Every officer, agent, teller, or clerk of any bank, and every individual banker, or agent, teller, or clerk of any individual banker, who receives any deposits, knowing that such bank, or association, or banker is insolvent is guilty of a misdemeanor.

Frauds in keeping accounts in books of corporation.

(2154.) SEC. 324. Every director, officer, or agent of any corporation or joint stock association, who knowingly receives or possesses himself of any property of such corporation or association, otherwise than in payment of a just demand, and who, with intent to defraud, omits to make, or to cause or direct to be made, a full and true entry thereof in the books or accounts of such corporation or association, and every director, officer, agent or member of any corporation or joint stock association who, with intent to defraud, destroys, alters, mutilates, or falsifies any of the books, papers, writings, or securities belonging to such corporation or association, or makes, or concurs in making, any false entries, or omits, or concurs in omitting to make any material entry in any book of accounts, or other record or document kept by such corporation or association, is punishable by imprisonment in the penitentiary not less than one nor more than five years, or by imprisonment in a county jail not exceeding one year, and a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

Officers of corporation publishing false reports of its condition.

(2155.) SEC. 325. Every director, officer, or agent of any corporation or joint stock association, who knowingly concurs in making or publishing any written report, exhibit or statement of its affairs or pecuniary condition, containing any material statement which is false, other than such as are mentioned in this chapter, is guilty of a misdemeanor.

(2156.) SEC. 326. Every officer or agent of any corpora-

Officer of corporation to permit an inspection of its books.

tion, having or keeping an office within this Territory, who has in his custody or control any book, paper, or document of such corporation, and who refuses to give to a stockholder or member of such corporation, lawfully demanding, during office hours, to inspect or take a copy of the same, or of any part thereof, a reasonable opportunity so to do, is guilty of a misdemeanor.

Officer of railroad company contracting debt in its behalf exceeding its available means.

(2157.) SEC. 327. Every officer, agent, or stockholder of any railroad company, who knowingly assents to, or has an agency in contracting any debt by or on behalf of such company, unauthorized by a special law for the purpose, the amount of which debt, with other debts of the company, exceeds its available means for the payment of its debts, in its possession, under its control, and belonging to it at the time such debt is contracted, including its *bona fide* and available stock subscriptions, and exclusive of its real estate, is guilty of a misdemeanor.

Debt contracted in violation of last section not invalid.

(2158.) SEC. 328. The last section does not affect the validity of a debt created in violation of its provisions, as against the company.

Director of corporation presumed to have knowledge of its affairs.

(2159.) SEC. 329. Every director of a corporation or joint stock association is deemed to possess such a knowledge of the affairs of his corporation as to enable him to determine whether any act, proceeding, or omission of its directors is a violation of this chapter.

Director present at meeting when presumed to have assented to proceedings.

(2160.) SEC. 330. Every director of a corporation or joint stock association who is present at a meeting of the directors at which any act, proceeding, or omission of such directors, in violation of this chapter occurs, is deemed to have concurred therein, unless he at the time causes, or in writing requires his dissent therefrom to be entered in the minutes of the directors.

Director absent from meeting, when presumed to have assented to proceedings.

(2161.) SEC. 331. Every director of a corporation or joint stock association, although not present at a meeting of the directors at which any act, proceeding, or omission of such directors in violation of this chapter occurs, is deemed to have concurred therein, if the facts constituting such violation appear on the records or minutes of the proceedings of the board of directors, and he remains a director of the same company for six months thereafter, and does not within that time cause, or in writing require, his dissent from such illegality to be entered in the minutes of the directors.

Foreign corporations.

(2162.) SEC. 332. It is no defense to a prosecution for a violation of the provisions of this chapter, that the corporation was one created by the laws of any State, government, or country, if it was one carrying on business or keeping an office therefor within this Territory.

"Director" defined.

(2163.) SEC. 333. The term "director" as used in this chapter, embraces any of the persons having by law the direction or management of the affairs of a corporation, by whatever name such persons are described in its charter or known by law.

CHAPTER XII.

OF MALICIOUS INJURIES TO RAILROAD BRIDGES, HIGHWAYS, BRIDGES AND TELEGRAPHS.

SECTION.
2164. Injuries to railroads and railroad bridges.
2165. Injuries to railroads for horse cars.
2166. Injuries to highways, private ways and bridges.
2167. Injuries to toll houses and gates.
2168. Injuries to milestones and guide boards.
2169. Injuring telegraph lines.

Injuries to railroads and railroad bridges.

(2164.) SEC. 334. Every person who maliciously either:

First—Removes, displaces, injures, or destroys any part of any railroad, for steam cars, or any track of any such railroad, or any branch or branchway, switch, turnout, bridge, viaduct, culvert, embankment, station house, or other structure or fixture, or any part thereof, attached to or connected with any such railroad; or,

Second—Places any obstruction upon the rails or track of any such railroad, or of any switch, branch, branchway, or turnout connected with any such railroad;

Is punishable by imprisonment in the penitentiary not exceeding five years.

Injury to railroads for horse cars.

(2165.) SEC. 335. Every person who maliciously, either:

First—Removes, displaces, injures or destroys, any part of any railroad for horse cars, or any track of any such railroad, or any branch, or branchway, switch, turnout, bridge, viaduct, culvert, embankment, station house, or other structure or fixture, or any part thereof attached to or connected with any such railroad; or, Second—Places any obstruction upon the rails or track of any such railroad, or of any switch, branch, branchway, or turnout, connected with any such railroad;

Is guilty of a misdemeanor.

Injuries to highways, private ways and bridges.

(2166.) Sec. 336. Every person who maliciously digs up, removes, displaces, breaks, or otherwise injures or destroys any public highway or bridge, or any private way laid out by authority of law, or bridge upon such highway or private way, is punishable by imprisonment in the penitentiary not exceeding three years or in the county jail not exceeding six months.

Injuries to toll houses and gates.

(2167.) Sec. 337. Every person who maliciously injures or destroys any toll house or turnpike gate, is guilty of a misdemeanor.

Injuries to milestones and guide boards.

(2168.) Sec. 338. Every person who maliciously removes or injures any mile board, post, or stone, or guide post, or any inscription on such, erected upon any highway, is guilty of a misdemeanor.

Injuring telegraph lines.

(2169.) Sec. 339. Every person who maliciously takes down, removes, injures, or obstructs any line of telegraph, or any part thereof, or appurtenance or apparatus connected therewith, or severs any wire thereof, is guilty of a misdemeanor.

TITLE XIV.

OF MALICIOUS MISCHIEF.

Section.
2170. Malicious mischief in general defined.
2171. Specifications in following sections not restrictive of last section.
2172. Poisoning cattle.
3173. Killing, maiming or torturing animals.
2174. Burning of buildings and other property not the subject of larceny.
2175. Malicious injuries to freehold.
2176. Injuries to standing crops.
2177. Removing, defacing or altering landmarks.

Section.
2178. Destroying or injuring jails.
2179. Destroying or injuring bridges, dams, levees, water dams, etc.
2180. Burning or injuring rafts.
2181. Injuries to signals, monuments, etc., erected in United States survey.
2182. Destroying or tearing down notices, etc., before expiration of time for which they were to remain set up.
2183. Injuring or destroying written instrument.
2184. Opening or publishing sealed letters.

SECTION.
2185. Disclosing contents of telegraphic message.
2186. Altering telegraphic messages.
2187. Opening sealed envelope containing telegraphic dispatches.
2188. Injuring works of art or improvements in any city or village.

SECTION.
2189. Destroying works of literature, etc., in public libraries.
2190. Breaking or obstructing gas or water pipes, etc.
2191. Drawing water from works after they have been closed.
2192. Turning water from canals, irrigating ditches, etc.

(2170.) SEC. 340. Every person who maliciously injures or destroys any real or personal property not his own, in cases otherwise than such as are specified in this code, is guilty of a misdemeanor. Malicious mischief in general defined.

(2171.) SEC. 341. The specification of the acts enumerated in the following sections of this chapter is not intended to restrict or qualify the interpretation of the preceding section. Specifications in following sections not restrictive of last section.

(2172.) SEC. 342. Every person who willfully, unlawfully and maliciously administers any poison to an animal, the property of another, or maliciously exposes any poisonous substance, with intent that the same shall be taken or swallowed by any such animal, is punishable by imprisonment in the penitentiary not exceeding three years, or in the county jail not exceeding six months or by fine not exceeding three hundred dollars, or by both. Poisoning cattle.

(2173.) SEC. 343. Every person who maliciously kills, maims, or wounds, an animal, the property of another, or who maliciously and cruelly beats, tortures, or injures any animal, whether belonging to himself or another, is guilty of a misdemeanor. Killing, maiming or torturing animals.

(2174.) SEC. 344. Every person who willfully and maliciously burns any bridge exceeding in value fifty dollars, or any building, snow shed, or vessel, not the subject of arson, or any stack of grain of any kind, or of hay, or any growing or standing grain, grass, or tree, or any fence, not the property of such person, is punishable by imprisonment in the penitentiary for not less than one nor more than ten years. Burning bridges and other property not the subject of arson.

(2175.) SEC. 345. Every person who willfully and maliciously commits any trespass, by either: Malicious injuries to freehold.

First—Cutting down, destroying, or injuring any kind of wood or timber standing or growing upon the land of another; or,

Second—Carrying away any kind of wood or timber that has been cut down and is lying on such lands; or,

Third—Maliciously injuring or severing from the freehold of another anything attached thereto, or the produce thereof; or,

Fourth—Digging, taking, or carrying away from any lot situated within the limits of any incorporated city, without the license of the owner or legal occupant thereof, any earth, soil, or stone; or,

Fifth—Digging, taking, or carrying away from any land in any of the cities of the Territory, laid down on the map or plan of such city, or otherwise recognized or established as a street, alley, avenue, or park, without the license of the proper authorities, any earth, soil, or stone; or,

Sixth—Putting up, affixing, fastening, printing, or painting upon any property belonging to the Territory or to any city, county, or village, or dedicated to the public, or upon any property of any person, without license from the owner, any notice, advertisement, or designation of, or any name for, any commodity, whether for sale or otherwise, or any picture, sign or device intended to call attention thereto; is guilty of a misdemeanor.

Injuries to standing crops.

(2176.) SEC. 346. Every person who maliciously injures or destroys any standing crops, grain, cultivated fruits, or vegetables, the property of another, in any case for which a punishment is not otherwise prescribed by this code, is guilty of a misdemeanor.

Removing, defacing, or altering land marks.

(2177.) SEC. 347. Every person who either:

First—Maliciously removes any monument erected for the purpose of designating any point in the boundary of any lot or tract of land, at a place where a subaqueous telegraph cable lies; or,

Second—Maliciously defaces or alters the marks upon any such monument; or,

Third—Maliciously cuts down or removes any tree upon which any such marks have been made for such purpose, with intent to destroy such marks;

Is guilty of a misdemeanor.

Destroying or injuring jails.

(2178.) SEC. 348. Every person who willfully and intentionally breaks down, pulls down, or otherwise destroys or injures any public jail or other place of confinement, is guilty of felony.

Destroying or injuring bridges, dams, levees, water dams, etc.

(2179.) SEC. 349. Every person who willfully and maliciously cuts, breaks, injures, or destroys any bridge, dam, canal, flume, aqueduct, levee, embankment, reservoir, or other structure erected to create hydraulic power, or to drain or reclaim any swamp and overflowed, or marsh land, or to conduct water for mining, manufacturing, reclamation, or agricultural purposes, or any embankment necessary to the same, or either of them; or willfully or maliciously makes or causes to be made, any aperture in such dam, canal, flume, aqueduct, reservoir, embankment, levee, or structure, with intent to injure or destroy the same; or draws up, cuts, or injures any piles fixed in the ground, and used for securing any lake or river bank or walls, or any dock, quay, jetty, or lock, is guilty of a misdemeanor.

Burning or injuring rafts.

(2180.) SEC. 350. Every person who willfully and maliciously burns, injures, or destroys any pile or raft of wood, plank, boards or other lumber, or any part thereof, or cuts loose or sets adrift any such raft or part thereof, or cuts, breaks, injures, sinks, or sets adrift any vessel, boat or skiff the property of another, is punishable by fine not exceeding three hundred dollars, or by imprisonment in the county jail not exceeding six months.

Injuries to signals, monuments, etc., erected in United States survey.

(2181.) SEC. 351. Every person who willfully injures, defaces, or removes any signal, monument, building, or appurtenance thereto, placed, erected or used by persons engaged in the United States survey, is guilty of a misdemeanor.

Destroying or tearing down notices, etc., before expiration of time for which they were to remain set up.

(2182.) SEC. 352. Every person who intentionally defaces, obliterates, tears down, or destroys any copy or transcript, or extract from, or of any law of the United States, or of this Territory, or any proclamation, advertisement, or notification set up at any place in this Territory, by authority of any law of the United States or of this Territory, or by order of any court, before the expiration of the time for which the same was to remain set up, is punishable by fine not less than twenty nor more than one hundred dollars, or by imprisonment in the county jail not more than one month.

Injuring or destroying written instruments.

(2183.) SEC. 353. Every person who maliciously mutilates, tears, defaces, obliterates or destroys any written instrument, the property of another, the false making of which would be forgery, is punishable by imprisonment in the penitentiary for not less than one nor more than two years.

Opening or publishing sealed letters.

(2184.) SEC. 354. Every person who willfully and corruptly opens or reads, or causes to be read, any sealed letter not addressed to himself, without being authorized so to do, either by the writer of such letter, or by the person to whom it is addressed, and every person who, without the like authority, publishes any of the contents of such letter, knowing the same to have been unlawfully opened, is guilty of a misdemeanor.

Disclosing contents of telegraphic message.

(2185.) SEC. 355. Every person who willfully and corruptly discloses the contents of a telegraphic message, or any part thereof, addressed to another person, without the permission of such person, is punishable by imprisonment in the penitentiary not exceeding five years, or in the county jail not exceeding one year, or by fine not exceeding one thousand dollars, or by both fine and imprisonment.

Altering telegraphic message.

(2186.) SEC. 356. Every person who willfully alters the purport, effect or meaning of a telegraphic message, to the injury of another, is punishable as provided in the preceding section.

Opening sealed envelopes containing telegraphic dispatches.

(2187.) SEC. 357. Every person not connected with any telegraphic office who, without the authority or consent of the person to whom the same may be directed, willfully opens any sealed envelope inclosing a telegraphic message and addressed to any other person, with the purpose of learning the contents of such message, or who fraudulently represents any other person and thereby procures to be delivered to himself any telegraphic message addressed to such other person, with the intent to use, destroy, or detain the same from the person or persons entitled to receive such message, is punishable as provided in the two preceding sections.

Injuring works of art or improvements in any city or village

(2188.) SEC. 358. Every person, not the owner thereof, who willfully injures, disfigures, or destroys any monument, work of art, or useful or ornamental improvement within the limits of any village or city, or any shade tree or ornamental plant growing thereon, whether situated upon private ground or on any street, sidewalk, or public park or place, is guilty of a misdemeanor.

Destroying works of literature, etc., in public libraries.

(2189.) SEC. 359. Every person who maliciously cuts, tears, defaces, breaks, or injures any book, map, chart, picture, engraving, statue, coin, model, apparatus, or other work of literature, art, or mechanics, or object of curiosity deposited in any public library, gallery, museum, collection, fair, or exhibition, is guilty of a misdemeanor.

Breaking or obstructing gas or water pipes.

(2190.) SEC. 360. Every person who willfully breaks, digs up, obstructs, or injures any pipe or main for conducting gas or water, or any works erected for supplying buildings with gas or water, or any appurtenance or appendages therewith connected, is guilty of a misdemeanor.

(2191.) SEC. 361. Every person who, with intent to defraud or injure, opens or causes to be opened, or draws water from any stopcock or faucet by which the flow water is controlled, after having been notified that the same has been closed or shut for specific cause, by order of competent authority, is guilty of a misdemeanor.

Drawing water from works after they have been closed.

(2192.) SEC. 362. Any person turning the water or any part thereof from any public canal, irrigating ditch, or reservoir except when the use of the water has been duly allotted to such person, is guilty of a misdemeanor, and any person willfully and maliciously breaking any dam in any stream, sluice, or ditch, or in any way changing the current or flow of the water used for irrigating purposes, is guilty of a misdemeanor.

Turning water from canals, irrigating ditches, etc.

TITLE XV.

MISCELLANEOUS CRIMES.

CHAPTER I. Violation of the laws for the preservation of game and fish.
CHAPTER II. Of other and miscellaneous offenses.

CHAPTER I.

VIOLATION OF THE LAWS FOR THE PRESERVATION OF GAME AND FISH.

SECTION.
2193. Destruction of grouse, ducks, etc., when prohibited.
2194. Destruction of elk, etc., when prohibited.
2195. Having game in possession during the time that killing thereof is prohibited.
2196. Fish not to be caught except with hooks.
2197. Taking fish by nets, etc., prohibited; proviso.
SECTION.
2198. Use of poisonous or explosive substances in fishing prohibited.
2199. Indians taking fish for their own use exempted.
2200. Taking of shad, salmon, etc., within next four years prohibited.
2201. Fishways and ladders, penalties for not keeping.
2202. Fishways and ladders, how to be constructed.

(2193.) SEC. 363. Every person who, between the fifteenth day of March and the fifteenth day of September in each year willfully takes, kills, destroys, or offers for sale quail, partridges, or grouse, or who, between the fifteenth

Destruction of grouse, duck, etc., when prohibited.

day of March and the fifteenth day of August in each year, willfully takes, kills, destroys, or offers for sale, mallard, wood, teal, spoonbill, or any kind of wild ducks, or who robs the nests of any such bird is guilty of a misdemeanor.

Destruction of elk, etc., when prohibited.

(2194.) SEC. 364. Every person who between the first day of January and the first day of July in each year, takes, kills, or destroys any elk, deer, mountain sheep, or antelope, is guilty of a misdemeanor.

Having in possession during the time that killing thereof is prohibited.

(2195.) SEC. 365. Every person who buys, sells, or has in his possession any of the game enumerated in the two preceding sections, within the time of the taking or killing thereof is prohibited, except such as are tamed or kept for show or curiosity, is guilty of a misdemeanor.

Fish not to be caught except with hooks.

(2196.) SEC. 366. Every person who, at any time takes, or catches any fish except with hook and line not exceeding three hooks to a line, is guilty of a misdemeanor.

Taking fish with nets, etc., prohibited.

(2197.) SEC. 367. Every person who takes, catches or kills, any fish by the use of seins, gill or dip nets, baskets, traps, or any device whatever, excepting as provided in section three hundred and sixty-eight is guilty of a misdemeanor: *Provided*, that the use of minnow nets shall not be considered, within the meaning of this section.

Proviso.

Use of poisonous or explosive substances in fishing prohibited.

(2198.) SEC. 368. Every person who puts into the waters of this Territory, or who uses any poisonous or explosive substance for the purpose of taking or destroying fish, is guilty of a misdemeanor.

Indians taking fish and game for their own use exempted.

(2199.) SEC. 369. Indians, taking fish or game for their own subsistence are exempted from the penalties prescribed, in this chapter.

Taking of shad, salmon, etc., within next four years prohibited.

(2200.) SEC. 370. Every person who at any time within the next four years shall take from any of the waters of this Territory any shad, salmon, black bass, white fish, silver eel, or any other fish which has been or may be imported or their progeny, or any oysters from any private oyster bed without the consent of the owner, is guilty of a misdemeanor, and shall be fined in any sum not exceeding four dollars for each fish or oyster so taken.

Fishways and ladders, penalties for not keeping.

(2201.) SEC. 371. Every person who shall construct or continue to keep any dam across any of the streams of water in this Territory in which fish migrate, in such a manner as to hinder or obstruct the migration of fish to and from their spawning grounds, without providing a fishway and keeping it in repair as provided in the next section, is guilty of a misdemeanor.

(2202.) SEC. 372. The fishway for the passage of fish in large streams of water, in the dam mentioned in the preceding section must be made of plank, or other material equivalent thereto, in the form of a box, open at each end, not less than four feet wide, and three feet high, and it must be fastened at the top of the dam, and the other end must extend to, and be fastened in the pool below the dam at an angle not exceeding thirty-five degrees. Inside this box fastened at the bottom and at one end to the side of the box there must be pieces of plank four feet apart placed transversly so as to cause a riffle not less than ten inches high. These pieces of plank must be thirty inches long, and so fastened as to be at right angles with the sides of the box, alternately fastened one at one side, the other at the other side of the box.

Fishways and ladders, how to be constructed.

Whenever the stream is small the county court of the county in which the dam is, or is to be constructed may permit the box to be made of less dimensions, the court taking good care to have a suitable passage.

CHAPTER II.

OF OTHER AND MISCELLANEOUS OFFENSES.

SECTION.
2203. Neglect or postponement out of regular order of telegraphic messages, limitations.
2204. Agent, operator, or employe using information from messages.
2205. Clandestinely learning the contents of a telegraphic message.
2206. Bribing telegraphic operator.

SECTION.
2207. Breaking, injuring, or interfering with telegraph line or apparatus.
2208. Vagrants.
2209. Sending letters threatening to expose another.
2210. Disposal of fines collected under this and preceding chapter.

(2203.) SEC. 373. Every agent, operator, or employe of any telegraph office, who willfully refuses or neglects to send any message received at such office for transmission, or willfully postpones the same out of its order, or willfully refuses or neglects to deliver any message received by telegraph, is guilty of a misdemeanor. Nothing herein contained shall be construed to require any message to be re-

Neglect or postponement out of regular order of telegraphic messages.

Limitations.

ceived, transmitted, or delivered, unless the charges thereon have been paid or tendered, nor to require the sending, receiving, or delivering of any message counseling, aiding, abetting, or encouraging treason against the government of the United States, or the resistance to the lawful authority, or any message calculated to further any fraudulent plan or purpose, or to instigate or encourage the perpetration of any unlawful act, or to facilitate the escape of any criminal or person accused of crime.

Agent, operator or employe using information from messages.

(2204.) SEC. 374. Every agent, operator, or employe of any telegraph office who in any way uses or appropriates any information derived by him from any private message passing through his hands, and addressed to any other person, or in any other manner acquired by him by reason of his trust as such agent, operator, or employe, or trades or speculates upon any such information so obtained, or in any manner turns, or attempts to turn, the same to his own account, profit, or advantage, is punishable by imprisonment in the penitentiary not exceeding one year, or by fine not exceeding one thousand dollars, or by both such fine and imprisonment.

Clandestinely learning the contents of a telegraphic message.

(2205.) SEC. 375. Every person who, by means of any machine, instrument, or contrivance, or in any other manner, willfully and fraudulently reads, or attempts to read, any message or to learn the contents thereof, whilst the same is being sent over any telegraph line, or willfully and fraudulently or clandestinely, learns or attempts to learn the contents or meaning of any message, while the same is in any telegraph office, or is being received thereat or sent therefrom, or who uses or attempts to use, or communicates to others, any information so obtained, is punishable as provided in the preceding section.

Bribing telegraphic operators.

(2206.) SEC. 376. Every person who, by the payment or promise of any bribe, inducement, or reward, procures or attempts to procure any telegraph agent, operator, or employe to disclose any private message or the contents, purport, substance, or meaning thereof, or offers to any such agent, operator, or employe any bribe, compensation, or reward for the disclosure of any private information received by him by reason of his trust as such agent, operator, or employe, or uses or attempts to use any such information, so obtained is punishable as provided in the preceding section.

(2207.) SEC. 377. Every person who shall willfully and

Breaking, injuring or interfering with telegraph line or apparatus.

maliciously cut, break, or throw down any telegraph pole, or any tree, or other material used in any line of telegraph; or shall willfully and maliciously break, displace or injure any insulator in use in any telegraph line; or shall willfully and maliciously cut, break, or remove from its insulator any wire used as a telegraph line; or shall, by the attachment of a ground wire or by any other contrivance, willfully destroy the insulation of such telegraph line, or intercept the transmission of the electric current through the same; or shall in any other manner willfully injure, molest or destroy any property or materials appertaining to any telegraph line; or shall willfully interfere with the use of any telegraph line; or obstruct or postpone the transmission of any message over the same, or procure or advise any such injury, interference, or obstruction, the person so offending shall be deemed guilty of a misdemeanor.

Vagrants.

(2208.) Sec. 378. Every person (except an Indian) without visible means of living, who has the physical ability to work, and who does not for the space of ten days seek employment, nor labor when employment is offered him; every healthy beggar who solicits alms as a business; every person who roams about from place to place without any lawful business; every idle or dissolute person, or associate of known thieves, who wanders about the streets at late or unusual hours of the night, or who lodges in any barn, shed, shop, outhouse, vessel, or place other than such as is kept for lodging purposes, without the permission of the owner or party entitled to the possession thereof; every lewd and dissolute person, who lives in and about houses of ill fame, and every common prostitute and common drunkard, is a vagrant, and punishable by imprisonment in the county jail not exceeding ninety days.

Sending letters threatening to expose another.

(2209.) Sec. 379. Every person who knowingly and willfully sends or delivers to another any letter or writing, whether subscribed or not, threatening to accuse him or another of a crime, or to expose or publish any of his failings or infirmities, is guilty of a misdemeanor.

Disposal of fines collected under this and preceding chapter.

(2210.) Sec. 380. The fines collected under the provisions of this and the preceding chapter are to be paid one-half to the informer and the balance into the county treasury of the county in which the offense is committed, for the benefit of district schools.

TITLE XVI.

GENERAL PROVISIONS.

SECTION.
2211. Acts made punishable by different provisions of this code.
2212. Acts punishable under foreign law.
2213. Foreign conviction or acquittal.
2214. Contempts how punishable.
2215. Mitigation of punishment in certain cases.
2216. Sending letter, when deemed complete.
2217. Omission to perform duty when punishable.
2218. Attempts to commit crimes when punishable.
2219. Attempts to commit crimes how punishable.
2220. Restrictions upon the preceding sections.

SECTION.
2221. Second term of imprisonment when to commence.
2222. When term of imprisonment commences, etc.
2223. Imprisonment for life.
2224. Civil rights of convicts suspended.
2225. Civil death.
2226. Restriction on the two preceding sections.
2227. Person of convict under protection of the law.
2228. Conviction for crime does not work forfeiture of property.
2229. Repealing section.
2230. Repealing inconsistent acts.

Acts made punishable by different provisions of this code.

(2211.) SEC. 381. An act or omission which is made punishable in different ways by different provisions of this code may be punished under either of such provisions, but in no case can it be punished under more than one; an acquittal or conviction and sentence under either one, bars a prosecution for the same act or omission under any other.

Acts punishable under foreign law.

(2212.) SEC. 382. An act or omission declared punishable by this code is not less so because it is also punishable under the laws of a State, government, or country, unless the contrary is expressly declared.

Foreign conviction or acquittal.

(2213.) SEC. 383. Whenever on the trial of an accused person it appears that upon a criminal prosecution under the laws of a State, government, or country, founded upon the act or omission in respect to which he is on trial, he has been acquitted or convicted it is a sufficient defense.

Contempts how punishable.

(2214.) SEC. 384. A criminal act is not less punishable as a crime because it is also declared to be punishable as a contempt.

Mitigation of punishment in certain cases.

(2215.) SEC. 385. When it appears, at the time of passing sentence upon a person convicted upon indictment, that such person has already paid a fine or suffered an imprisonment for the act of which he stands convicted, under an order adjudging it a contempt, the court authorized to pass sentence may mitigate the punishment to be imposed, in its discretion.

Sending letter when deemed complete.

(2216.) SEC. 386. In the various cases in which the sending of a letter is made criminal by this code, the offense is deemed complete from the time when such letter is deposited in any post office, or any other place, or delivered to any person, with intent that it shall be forwarded.

Omission to perform duty, when punishable.

(2217.) SEC. 387. No person is punishable for an omission to perform an act, where such act has been performed by another person acting in his behalf and competent by law to perform it.

Attempts to commit crimes, when punishable.

(2218.) SEC. 388. Any person may be convicted of an attempt to commit a crime, although it appears on the trial that the crime intended or attempted was perpetrated by such person in pursuance of such attempt, unless the court, in its discretion, discharges the jury and directs such person to be tried for such crime.

Attempts to commit crime how punishable.

(2219.) SEC. 389. Every person who attempts to commit any crime, but fails, or is prevented or intercepted in the perpetration thereof, is punishable, where no provision is made by law for the punishment of such attempts, as follows:

First—If the offense so attempted is punishable by imprisonment in the penitentiary for five years, or more, or by imprisonment in a county jail, the person guilty of such attempt is punishable by imprisonment in the penitentiary, or in a county jail, as the case may be, for a term not exceeding one half the longest term of imprisonment prescribed upon a conviction of the offense so attempted;

Second—If the offense so attempted is punishable by imprisonment in the penitentiary for any term less than five years, the person guilty of such attempt is punishable by imprisonment in the county jail for not more than one year;

Third—If the offense so attempted is punishable by a fine the offender convicted of such attempt is punishable by a fine not exceeding one-half the largest fine which may be imposed upon a conviction of the offense so attempted;

Fourth—If the offense so attempted is punishable by imprisonment and by a fine, the offender convicted of such attempt may be punished by both imprisonment and fine, not exceeding one-half the longest term of imprisonment and one-half the largest fine which may be imposed upon a conviction for the offense so attempted.

Restrictions upon preceding sections.

(2220.) SEC. 390. The last two sections do not protect a person who, in attempting unsuccessfully to commit a crime, accomplishes the commission of another and different crime, whether greater or less in guilt, from suffering the punishment prescribed by law for the crime committed.

Second term of imprisonment when to commence.

(2221.) SEC. 391. When any person is convicted of two or more crimes before sentence has been pronounced upon him for either, the imprisonment to which he is sentenced upon the second or other subsequent conviction must commence at the termination of the first term of imprisonment to which he shall be adjudged or at the termination of the second or other subsequent term of imprisonment, as the case may be.

When term of imprisonment commences, etc.

(2222.) SEC. 392. The term of imprisonment fixed by the judgment in a criminal action commences to run only upon the actual delivery of the defendant at the place of imprisonment, and if thereafter, during such term, the defendant by any legal means is temporarily released from such imprisonment and subsequently returned thereto, the time during which he was at large must not be computed as part of such term.

Imprisonment for life.

(2223.) SEC. 393. Whenever any person is declared punishable for a crime by imprisonment in the penitentiary for a term not less than any specified number of years, and no limit to the duration of such imprisonment is declared, the court authorized to pronounce judgment upon such conviction, may in its discretion, sentence such offender to imprisonment during his natural life, or for any number of years not less than that prescribed.

Civil rights of convict suspended.

(2224.) SEC. 394. A sentence of imprisonment in the penitentiary for any term less than for life suspends all civil rights of the person so sentenced and forfeits all public offices, and all private trusts, authority, or power during such imprisonment.

Civil death.

(2225.) SEC. 395. A person sentenced to imprisonment in the penitentiary for life is thereafter, deemed civilly dead.

Restriction on two preceding sections.

(2226.) SEC. 396. The provisions of the two preceding sections must not be construed to render the persons therein mentioned, incompetent as witnesses upon the trial of a criminal action or proceeding, or incapable of making and acknowledging a sale or conveyance of property, or to make a last will and testament, or to do such other acts as are permitted by law.

(2227.) SEC. 397. The person of a convict sentenced to imprisonment in the penitentiary is under the protection of the law, and any injury to his person, not authorized by law, is punishable in the same manner as if he was not convicted or sentenced.

Person of convict under protection of the law.

(2228.) SEC. 398. No conviction of any person for crime works any forfeiture of any property, except in cases in which a forfeiture is expressly imposed by law, and all forfeitures to the people of this Territory in the nature of a deodand, or where any person shall flee from justice, are abolished.

Conviction for crime does not work forfeiture of property.

(2229.) SEC. 399. The several acts of the governor and Legislative Assembly of this Territory in this section mentioned be and the same are hereby repealed:

Repealing section.

First—The act entitled "An act in relation to crimes and punishments," approved March 6th, 1852;

Second—The act entitled "An act in relation to defrauding, cheating, and swindling," approved January 20, 1865;

Third—The act entitled "An act concerning libel," approved February 21, 1868;

Fourth—The ordinance entitled "An ordinance prohibiting the sale of arms, ammunition or spirituous liquors to the Indians," approved March 28, 1850.

(2230.) SEC. 400. All acts and parts of acts heretofore passed by the governor and Legislative Assembly of this Territory inconsistent with the provision of this act be and the same are hereby repealed.

Repealing inconsistent acts.

TITLE XXII.

OF THE PROCEDURE IN CRIMINAL CASES.

CHAPTER I. General provisions.
CHAPTER II. Procedure in justices' courts.

CHAPTER I.

GENERAL PROVISIONS.

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2231. Duty of judge or justice having knowledge of the commission of a crime.
2232. Any person present may arrest offender.
2233. Order to arrest.
2234. Accused to be tried or released.
2235. Time of trial to be fixed.
2236. Witnesses to be summoned.
2237. Compulsory process may issue for absent witnesses.
2238. Proceedings on the confession of guilt; on the trial.
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2241. Oath of jurors.
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2243. Duty of officers if jury retire.
2244. Verdict.
2245. To be discharged in case of disagreement.
2246. Costs.
2247. Grand jury.
2248. What the indictment must state.
2249. Plea of the accused.
2250. If the court has no jurisdiction.

SECTION.
2251. Bail of witnesses and accused.
2252. When depositions may be taken.
2253. If juror becomes incapacitated trial may proceed.
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2255. Appeals.
2256. When prosecutions must be commenced.
2257. Order of court to be executed with diligence.
2258. Punishment for contempts.
2259. In what cases prisoners to be admitted to bail.
2260. Witnesses to recognize.
2261. Testimony of witnesses upon examination to be reduced to writing.
2262. Disposition of examinations and recognizances.
2263. Power and duty of officers in case of escapes.
2264. Where a fine is imposed, court may order imprisonment.
2265. Duty of county court when prisoners cannot pay fine.
2266. When complainant to pay costs.

An Act regulating the mode of procedure in criminal cases.

[*Approved January* 21, 1853.]

Duty of judge or justice having knowledge of the commission of a crime.

(2231.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That when a justice or judge knows, or has information under oath, that a person has threatened to commit an offense, he shall issue an order requiring an officer to bring such person before him, when he shall examine the matter, and may require bonds for good behavior for not less than three months nor longer than his stay in this Territory, or retain him a discretionary length of time.

(2232.) SEC. 2. Any person being present at the commission of an offense, shall forthwith take the offender before the nearest justice for examination. Any person present may arrest offender.

(2233.) SEC. 3. When a complaint is made, under oath, that an offense has been committed, the justice or judge shall issue an order, requiring an officer to take all requisite steps to bring the offender before him. Order to arrest.

(2234.) SEC. 4. When a person accused of committing an offense is brought before a justice or judge, he shall determine whether such person shall be put upon trial or released. Accused to be tried or released.

(2235.) SEC. 5. If it be determined that the accused be put upon trial, and the justice or judge has jurisdiction of the case, he shall appoint a time therefor; and if not, he shall order an officer to take him and the necessary papers to a court having jurisdiction. Time of trial to be fixed.

(2236.) SEC. 6. The justice or judge shall issue an order to an officer to summon all the witnesses required, but neither party shall have more than three witnesses to prove the same fact. Witnesses to be summoned

(2237.) SEC. 7. At the time of trial if the accused or an important witness be absent, the court shall issue a compulsory order for his appearance, and may adjourn until it can be had. Compulsory process may issue for absent witness:

(2238.) SEC. 8. When the accusation is read, if the accused confess he is guilty, the court may enquire into the amount of guilt and decide accordingly; and if not, the evidence on the part of the accusation shall be heard, and then that of the accused; after which, if either party can satisfy the court that important evidence, which he can procure, is still wanting, his demand may be complied with; when all the evidence is heard, the accuser may make such applicable remarks as he deems proper, and also the accused, and the court shall render judgment as soon as practicable. Proceedings on confession of guilt on the trial.

(2239.) SEC. 9. In jury cases, before the introduction of any evidence, the court shall issue an order, requiring an officer to summon for that purpose a reasonable number of Jury.

judicious men residents of the county, out of which twelve, shall be selected; and if the number first summoned is not sufficient, the officer shall continue to summon till the number is complete. (1)

Challenges. (2240.) SEC. 10. Previous to swearing persons drawn or selected to serve as a petit jury, each party may challenge for cause to the number that either or both parties may be able to produce what to them seems to be good cause, the validity of said cause to be determined by the court, and each party may, as aforesaid, peremptorily challenge as many as six persons. (1)

Oath of jurors. (2241.) SEC. 11. The persons selected shall be sworn to try the case faithfully and give a just verdict, and have no communication concerning the case, until they are discharged, with any but a fellow juror, or with the court personally, or through the officer in whose charge they may be placed.

Charge to jury. (2242.) SEC. 12. The court shall instruct the jury, on the law and equity in the case, and give them such other instructions as may be necessary.

Duty of officer if jury retire. (2243.) SEC. 13. If the jury have to retire to agree upon their verdict, the court shall direct an officer to keep them separate from all others, and to prevent their communicating with any but the court, until they are discharged.

Verdict. (2244.) SEC. 14. The verdict of the jury shall be made by their unanimous agreement, and in writing, and be presented to the court, and read in the presence of the accused; and in capital cases shall read "guilty" or "not guilty;" and in other cases, if against the accused, shall state the amount of damages and the nature and extent of the punishment. (2)

To be discharged in case of disagreement. (2245.) SEC. 15. After being furnished all necessary information, if the jury satisfy the court that they cannot agree, they shall be discharged, and the court shall cause another jury to be arranged and proceed again to try the case.

Costs. (2246.) SEC. 16. The court shall award the costs, and authorize and require a proper officer to execute the judgment.

Grand jury. (2247.) SEC. 17. When necessary, the court shall issue an order requiring an officer to summon fifteen judicious men, residents of the county, for a grand jury, who shall be sworn to enquire faithfully into offenses, and present indictments by the agreement of at least twelve of their number against offenders who should be prosecuted; and the foreman shall have power to swear witnesses and compel their attendance. (1)

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(1) The mode of procuring a jury and the number of challenges, in the district courts, is prescribed by sec. 4 of an act of Congress; see page 54.

(2) See page 56.

(2248.) SEC. 18. The indictment must be made in the name of the people, and must state the name of the offender, the offense, the manner of committing it, and, as near as may be, the time and place of its occurrence; be signed by the foreman, with the names of the required witnesses written thereon, and be presented to the court, who may correct mistakes that do not prejudice the trial. When the name of an offender is not known, he may be proceeded against with any name. (2) What the indictment must state.

(2249.) SEC. 19. In answer to the accusation the accused may state "guilty," or "not guilty;" may object to the jurisdiction of the court, or urge a former acquittal in the same case; and during the trial either party may object, in writing, to any decision of the court which he considers unjust. Plea of accused.

(2250.) SEC. 20. When the court has not jurisdiction, or the accused give other satisfactory evidence for removal, an officer shall be required to take the accused, the indictment and all necessary papers to the nearest court having jurisdiction. If court has no jurisdiction.

(2251.) SEC. 21. In all cases bail may be required of witnesses, and in all but capital offenses may be taken of the accused for appearance at time and place of trial. Bail of witnesses and accused.

(2252.) SEC. 22. When it is not reasonable that the witness be present at the trial, his deposition may be taken in the presence of the parties, or without that presence if it be waived. When depositions may be taken.

(2253.) SEC. 23. If a juror by any cause be incapacitated for attendance through the trial, it may proceed, and the verdict shall be valid. If juror becomes incapacitated, trial may proceed.

(2254.) SEC. 24. The property of a person accused of an offense shall be held depending the execution of the judgment. Property of accused.

(2255.) SEC. 25. Immediately after judgment appeals may be taken by either party, on written objections to illegal or unjust proceedings on the part of the court or jury, and Appeals.

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(1) See sec. (1080.)
(2) See sec. (1076.)

the objections must be certified up by the court, upon which a superior court may confirm, reverse or modify the judgment, or order a new trial.

When prosecutions must be commenced.

(2256.) SEC. 26. Prosecution for offense must be commenced as soon after the offense has been committed, or the offender is known, as the circumstances will warrant.

Order of court to be executed with diligence.

(2257.) SEC. 27. The officer entrusted shall execute the order or judgment of the court; and is hereby authorized and empowered to break any and every description of fastenings that may obstruct his search for such persons or property as he presumes to be concealed; and shall make return thereof with diligence.

Punishments for contempts

Disposition of fines.

(2258.) SEC. 28. (1) The courts of this Territory shall have power to punish for contempt and disobedience to orders, by a reasonable preventive amount of fine; and all fines and forfeitures that shall hereafter be assessed by the district courts shall be paid into the Territorial treasury and all fines and forfeitures accruing from cases arising under the laws of the Territory before justices of the peace shall be paid into the treasury of the county in which the cause of action originated.

In relation to commitment and bail.

[*Approved January* 16, 1861.]

In what cases prisoners to be admitted to bail.

(2259.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That, if it shall appear to any magistrate, to whom complaint is made or before whom any prisoner is brought, that an offense has been committed, and that there is probable cause to believe the prisoner guilty, and if the offense be bailable and the prisoner offer sufficient bail, or the amount of money in lieu thereof, it shall be taken and the prisoner discharged; but if no sufficient bail be offered, or the offense be not bailable, the prisoner shall be committed for trial.

Witnesses to recognize.

(2260.) SEC. 2. When a magistrate admits a prisoner to bail, or commits him, he shall also bind by recognizance such witnesses against the prisoner as he shall deem material, to appear and testify at the next court having recognizance of the offense, and in which the prisoner shall be held to answer.

Testimony of witnesses to be reduced to writing.

(2261.) SEC. 3. The testimony of the witnesses examined shall be reduced to writing by the magistrate, or under his direction, when he shall think it necessary, and shall be signed by the witnesses, if required by the magistrate.

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(1) As amended by act of Feb., 1876.

(2262.) SEC. 4. All examinations and recognizance taken by any magistrate shall be certified and returned by him to the prosecuting attorney, or to the clerk of the court, before which the party charged is bound to appear, on or before the first day of the sitting thereof; and if such magistrate shall neglect or refuse to return the same he may be compelled forthwith, by rule of court; and in case of disobedience may be proceeded against by attachment as for contempt.

Disposition of examinations and recognizances.

Concerning arrests.

[*Approved January* 18, 1861.]

(2263.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That if a person, against whom a warrant has been issued for an alleged offense committed in any county, shall, either before or after the issuing of such warrant, escape from or be out of said county, the sheriff or other officer to whom such warrant is directed may pursue and apprehend said person in any county in this Territory; and for that purpose may command aid and exercise the same authority as in his own county; and if an arrested person escapes or is rescued, the officer from whose custody he has escaped or been rescued may, without a warrant, pursue and retake him in any place in the Territory.

Power and duty of officers in case of escapes.

An Act to amend "An act regulating the mode of procedure in criminal cases," approved January 21, 1853.

[*Approved February* 19, 1869.]

(2264.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That in all cases where, by law, the courts are authorized to assess a fine for any public offense, and on due trial a fine shall be assessed, the court is hereby authorized to order the person convicted to be imprisoned until such fine and costs are paid or secured to be paid to the satisfaction of the court: *Provided*, that the term courts in this act shall also include courts held by mayors, aldermen and justices of the peace of incorporated towns and cities.

When a fine is imposed court may order imprisonment.

(2265.) SEC. 2. It shall be the duty of the court in

Duty of court when prisoner cannot pay fine. all cases where any person is actually imprisoned, pursuant to its order for the non-payment of any fine, on being satisfied that such convicted person is unable to pay such fine, or to secure its payment, to make such order in the premises as justice and equity may require: *Provided*, such person shall not be detained in prison for a longer period than will be sufficient to pay such fine and costs at the rate of one dollar per day, and the officer having such person in custody may cause him to be kept at labor during the usual laboring hours of each laboring day.

SEC. 3. (1)

An Act concerning costs and fees of courts, and for other purposes. (2)

[*Approved January* 21, 1859.]

When complainant to pay costs. (2266.) SEC. 13. In all cases of criminal prosecution, where the complainant is not an eye witness of the crime alleged, and the defendant is not found guilty on trial, the complainant shall pay the costs, unless probable cause shall have been shown in said trial; and all persons found guilty of crime, upon trial, shall pay the costs, except where the party is insolvent, in which case a county court may authorize the payment of said costs, or such part thereof as their discretion shall dictate, out of the county treasury: *Provided*, that a county court shall not appropriate more than one-third of the county revenue to defray the expenses of courts for any one year; and that, in all appropriations of a county court for court expenses, that of dieting prisoners shall have the precedence.

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(1) Amended section 9 of original act and is inserted therein.

(2) All the other sections of this act were repealed by act of Feb. 20, 1874.

CHAPTER II.

PROCEDURE IN JUSTICES' COURTS.

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An Act to extend the jurisdiction of justices of the peace in criminal cases, and to regulate the mode of procedure therein.

[*Approved February* 18, 1876.]

PRELIMINARY PROVISIONS.

"Complaint" defined.

(2267.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That a complaint is the allegation in writing made to a magistrate that a person has been guilty of some designated public offense.

"Magistrate" defined.

(2268.) SEC. 2. A magistrate is an officer having power to issue a warrant for the arrest of a person charged with a public offense.

(2269.) SEC. 3. The following persons are magistrates within the meaning of that term as used in this act: Who are magistrates.

Justices of the peace.

(2270.) SEC. 4. A peace officer is a sheriff of a county, a constable of a precinct, a marshal or a policeman of any incorporated city. Peace officer, who is.

(2271.) SEC. 5. Nothing in this act is to be construed to take away the right of the district judges, nor the right of justices of the peace to act as magistrates for the purpose of enquiring into public offenses under the existing laws, and to commit for trial or hold to bail persons accused of crimes; nor to repeal any such laws. Construction of this act.

DISPOSAL OF PROPERTY STOLEN OR EMBEZZLED.

(2272.) SEC. 6. When property, alleged to have been stolen or embezzled, comes into the custody of a peace officer, he must hold it subject to the order of the magistrate authorized by the next section to direct the disposal thereof. Disposition of property alleged to have been stolen or embezzled.

(2273.) SEC. 7. On satisfactory proof of the ownership of the property, the magistrate before whom the information is laid, or who examines the charge against the person accused of stealing or embezzling it, must order it to be delivered to the owner, on his paying the necessary expenses incurred in its preservation, to be certified by the magistrate. The order entitles the owner to demand and receive the property. Same.

(2274.) SEC. 8. If property stolen or embezzled comes into custody of the magistrate, it must be delivered to the owner on satisfactory proof of his title, and on his paying the necessary expenses incurred in its preservation, to be certified by the magistrate. Magistrate must deliver it to owner.

(2275.) SEC. 9. If the property stolen or embezzled is not claimed by the owner before the expiration of six months from the conviction of a person for stealing or embezzling it, the magistrate or other officer having it in custody must sell the same at public auction, as provided by law for the sale of personal property on execution, and apply the proceeds: Property not claimed must be sold and proceeds how applied.

First—To the necessary expenses for its preservation and sale;

Second—Any balance must be paid into the county treasury of the county in which the offense was committed.

When money taken from defendant, receipts must be given.

(2276.) SEC. 10. When money or other property is taken from a defendant, arrested upon a charge of a public offense, the officer taking it must at the time give duplicate receipts therefor, specifying particularly the amount of money or the kind of property taken; one of which receipts he must deliver to the defendant and the other he must forthwith file with the court to which the depositions and statement are to be sent. When such property is taken by a police officer of any incorporated city, he must deliver one of the receipts to the defendant, and the other with the property, at once to the clerk or other person in charge of the police office in such city.

Clerk of police office must keep record.

(2277.) SEC. 11. The clerk, or person having charge of, the police office in any incorporated city must enter in a suitable book a description of every article of property alleged to be stolen or embezzled, and brought into the office or taken from the person of a prisoner, and must attach a number to each article, and make a corresponding entry thereof.

OF SEARCH WARRANTS.

"Search warrant" defined.

(2278.) SEC. 12. A search warrant is an order in writing, in the name of the people, signed by a magistrate, directed to a peace officer, commanding him to search for personal property, and bring it before the magistrate.

Upon what grounds it may be issued

(2279.) SEC. 13. It may be issued upon either of the following grounds:

First—When the property was stolen or embezzled: in which case it may be taken on the warrant, from any place in which it is concealed, or from any person in whose possession it may be;

Second—When it was used as the means of committing a felony; in which case it may be taken on the warrant from the place in which it is concealed, or from any person in whose possession it may be;

Third—When it is in the possession of any person with the intent to use it as the means of committing a public offense, or in the possession of another to whom he may have delivered it for the purpose of concealing it or preventing its being discovered; in which case it may be taken on the warrant from such person, or from any place occupied by him or under his control, or from the possession of the person to whom he may have so delivered it.

(2280.) SEC. 14. A search warrant cannot be issued but upon probable cause, supported by affidavit, naming or describing the person, and particularly describing the property and the place to be searched.

It cannot be issued but upon probable cause, etc.

(2281.) SEC. 15. The magistrate must, before issuing the warrant, examine on oath the complainant, and any witnesses he may produce, and take their depositions in writing, and cause them to be subscribed by the parties making them.

Magistrate must examine, on oath, complainant, etc.

(2282.) SEC. 16. The depositions must set forth the facts tending to establish the grounds of the application, or probable cause for believing that they exist.

Depositions, what to contain.

(2283.) SEC. 17. If the magistrate is thereupon satisfied of the existence of the grounds of the application, or that there is probable cause to believe their existence, he must issue a search warrant, signed by him with his name of office, to a peace officer in his county, commanding him forthwith to search the person or place named, for the property specified, and to bring it before the magistrate.

When to issue warrant.

(2284.) SEC. 18. The warrant must be in substantially the following form: County of , the people of the Territory of Utah, to any sheriff, constable, marshal, or policeman in the county of : Proof, by affidavit, having been this day made before me by (naming every person whose affidavit has been taken), that (stating the grounds of the application, or, if the affidavit be not positive, that there is probable cause for believing that—stating the ground of the application in the same manner), you are therefore commanded, in the day time (or at any time of the day or night, as the case may be), to make immediate search on the person of (or in the house situated , describing it or any other place to be searched, with reasonable particularity, as the case may be) for the following property: (describing it with reasonable particularity); and if you find the same or any part thereof, to bring it forthwith before me at (stating the place). Given under my hand, and dated this day of , A. D. eighteen . , justice of the peace (or as the case may be).

Form of warrant.

(2285.) SEC. 19. A search warrant may in all cases be served by any of the officers mentioned in its directions, but by no other person, except in aid of the officer on his requiring it, he being present and acting in its execution.

By whom served.

(2286.) SEC. 20. The officer may break open any outer or inner door or window of a house, or any part of a house,

Officer may open door, etc., to execute warrant.

or anything therein, to execute the warrant, if, after notice of his authority and purpose, he is refused admittance.

May liberate persons acting in his aid.

(2287.) SEC. 21. He may break open any outer or inner door or window of a house, for the purpose of liberating a person who, having entered to aid him in the execution of the warrant, is detained therein, or when necessary for his own liberation.

When warrant may be served in the night.

(2288.) SEC. 22. The magistrate must insert a direction in the warrant that it be served in the day time, unless the affidavits are positive that the property is on the person or in the place to be searched, in which case he may insert a direction that it be served at any time of the day or night.

Within what time warrant must be executed.

(2289.) SEC. 23. A search warrant must be executed and returned to the magistrate who issued it within twenty days after its date; after the expiration of this time the warrant, unless executed, is void.

Officer to give receipt for property taken.

(2290.) SEC. 24. When the officer takes property under the warrant, he must give a receipt for the property taken (specifying it in detail) to the person from whom it was taken by him, or in whose possession it was found; or, in the absence of any person, he must leave it in the place where he found the property.

Property, how disposed of.

(2291.) SEC. 25. When the property is delivered to the magistrate, he must, if it was stolen or embezzled, dispose of it as provided in sections seven to twelve, inclusive. If it was taken on a warrant issued on the grounds stated in the second and third subdivisions of section thirteen, he must retain it in his possession, subject to the order of the court to which he is required to return the proceedings before him, or of any other court in which the offense in respect to which the property taken is triable.

Return of warrant and delivery of inventory of property taken.

(2292.) SEC. 26. The officer must forthwith return the warrant to the magistrate, and deliver to him a written inventory of the property taken, made publicly or in the presence of the person from whose possession it was taken, and of the applicant for the warrant, if they are present, verified by the affidavit of the officer at the foot of the inventory, and taken before the magistrate at the time, to the following effect: "I, , the officer by whom this warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant."

Copy of inventory, to whom delivered.

(2293.) SEC. 27. The magistrate must thereupon, if required, deliver a copy of the inventory to the person from whose possession the property was taken, and to the applicant for the warrant.

(2294.) SEC. 28. If the grounds on which the warrant was issued be controverted, he must proceed to take testimony in relation thereto, and the testimony of each witness must be reduced to writing and authenticated in the following manner:

Proceedings if grounds of warrant are controverted.

First—It must state the name of the witness, his place of residence and his business or profession.

Second—It must contain the questions put to the witness, and his answers thereto, each answer being distinctly read to him as it is taken down, and being corrected or added to until it conforms to the truth.

Third—If a question put be objected to on either side and overruled, or the witness declines answering it, that fact, with the ground on which the question was overruled or the answer declined, must be stated.

Fourth—The deposition must be signed by the witness, or if he refuses to sign it, his reason for refusing must be stated in writing as he gives it.

Fifth—It must be signed and certified by the magistrate.

(2295.) SEC. 29. If it appears that the property taken is not the same as that described in the warrant, or that there is no probable cause for believing the existence of the grounds on which the warrant was issued, the magistrate must cause it to be restored to the person from whom it was taken.

When property to be restored to person from whom taken.

(2296.) SEC. 30. The magistrate must annex together the depositions, the search warrant, the return, and the inventory; and return them to the court having power to inquire into the offense in respect to which the search warrant was issued, at or before the opening of the court on the first day of its next term, or if he have jurisdiction of the offense he must retain them and proceed to try the accused.

Disposition of depositions, warrant, etc.

(2297.) SEC. 31. When a person charged with a felony is supposed to have on his person a dangerous weapon, or anything which may be used as evidence of the commission of the offense, the officer making the arrest shall cause him to be searched, and the weapon or other thing to be retained, subject to the order of the court in which the defendant may be tried.

When defendant may be searched.

MISCELLANEOUS PROVISIONS.

(2298.) SEC. 32. The party prosecuting a special pro-

Parties to special proceedings, how designated. ceeding of a criminal nature is designated in this act as the complainant, and the adverse party as the defendant.

Subpœnas. (2299.) SEC. 33. The courts and magistrates before whom such proceedings are prosecuted may issue *subpœnas* for witnesses, and punish their disobedience in the same manner as in a criminal action.

Entitling affidavits. (2300.) SEC. 34. It is not necessary to entitle an affidavit, or deposition in an action, whether taken before or after complaint or information or on appeal; but if made without a title, or with an erroneous title, it is as valid and effectual for every purpose as if it were duly entitled; if it intelligibly refer to the proceedings, information, complaint or appeal in which it is made.

PROCEEDINGS IN JUSTICES' COURTS.

Jurisdiction of magistrates (2301.) SEC. 35. Magistrates have jurisdiction to hear, try and determine all public offenses arising in their respective counties, wherein the punishment prescribed by law does not exceed one hundred days' imprisonment in the county jail or a fine in any sum less than one hundred dollars, or both.

Proceedings must be commenced by complaint. (2302.) SEC. 36. All proceedings and actions before magistrates' courts, for a public offense of which such courts have jurisdiction, must be commenced by complaint under oath, setting forth the offense charged, with such particulars of time, place, person, and property as to enable the defendant to understand distinctly the character of the offense complained of, and to answer the complaint.

When warrant of arrest must issue. (2303.) SEC. 37. If the magistrate is satisfied that the offense complained of has been committed, he must issue a warrant of arrest, which must be substantially in the following form: County of   The people of the Territory of Utah to any sheriff, constable, marshal, or policeman in this Territory: Complaint upon oath having been this day made before me   (Justice of the peace), by C. D., that the offense of (designating it generally) has been committed, and accusing E. F. thereof; you are therefore commanded to arrest the above named E. F. and bring him before me forthwith, at (naming the place). Witness my hand and seal at   this   day of   A. D.   A. B.

Form of warrant.

Docket, how kept. (2304.) SEC. 38. A docket must be kept by the magistrate in which must be entered each action and the proceedings of the court therein.

(2305.) SEC. 39. The defendant may demur to the complaint when it appears upon the face thereof:

Defendant may demur.

First—That it does not conform to the requirements of section thirty-six of this act;

Second—That the facts stated do not constitute a public offense.

(2306.) SEC. 40. If the demurrer be sustained a new complaint must be filed within such time not exceeding one day as the justice may name, if such new complaint be not filed the defendant must be discharged.

When new complaint to be filed.

(2307.) SEC. 41. The defendant may plead:

What the defendant may plead.

First—Guilty;

Second—Not guilty;

Third—A former judgment of conviction or acquittal (stating when and where) of the offense charged which may be pleaded either with or without the plea of not guilty.

(2308.) SEC. 42. Upon a plea other than a plea of guilty, if the defendant does not demand a trial by jury, or an adjournment or change of venue is not granted, the court must proceed to try the case.

Issue, how tried.

(2309.) SEC. 43. A change of the place of trial may be had at any time before the trial commences:

Change of venue, when granted.

First—When it appears from the affidavit of the defendant that he has reason to believe, and does believe, that he cannot have a fair and impartial trial before the justice about to try the case, by reason of the prejudice or bias of such justice, the cause must be transferred to another justice of the same or another precinct of the same county;

Second—When it appears from affidavits that the defendant cannot have a fair and impartial trial by reason of the prejudice of the citizens of the precinct, the cause must be transferred to a justice of a precinct of the same county where the same prejudice does not exist.

(2310.) SEC. 44. When a change of the place of trial is ordered, the justice must transmit to the justice before whom the trial is to be had all the original papers in the cause, with a certified copy of the minutes of his proceedings; and upon receipt thereof, the justice to whom they are delivered must proceed with the trial in the same manner as if the proceeding or action had been originally commenced in his court; only one change of the place of trial shall be allowed in the same action.

Proceedings on change of venue.

(2311.) SEC. 45. Before the commencement of a trial in any of the courts mentioned in this act, either party may,

Postponement of the trial.

upon good cause shown, have a reasonable postponement thereof.

Defendant to be present at trial.

(2312.) SEC. 46. The defendant must be personally present before the trial can proceed.

Jury trial, when to be demanded.

(2313.) SEC. 47. Before the court hears any testimony upon the trial, the defendant may demand a trial by jury. The formation and number of the jury is provided for in title sixteen, chapter three, of the code of civil procedure.

Challenges.

(2314.) SEC. 48. Challenges may be taken by either party to the panel of jurors, or to any individual juror, but the challenge must in all cases be tried by the court.

Peremptory.

(2315.) SEC. 49. A peremptory challenge is an objection to a juror for which no reason need be given but upon which the justice must exclude him. The defendant may have three and the people two peremptory challenges.

For cause, either general or particular.

A challenge for cause may be taken by either party. It is an objection to a particular juror, and is either:

First—General—that the juror is disqualified from serving in any case; or,

Second—Particular—that he is disqualified from serving in the action on trial.

What are general causes.

General causes of challenge are:

First—A conviction for felony;

Second—A want of any of the qualifications prescribed by law to render a person a competent juror;

Third—Unsoundness of mind, or such defect in the faculties of the mind or organs of the body as renders him incapable of performing the duties of a juror.

What are particular causes.

Particular causes of challenge are of two kinds:

First—For such a bias as, when the existence of the facts is ascertained, in judgment of law disqualifies the juror, and which is known in this act as implied bias;

Second—For the existence of a state of mind on the part of the juror in reference to the case, which, in the exercise of a sound discretion on the part of the court, leads to the inference that he will not act with entire impartiality, and which is known in this act as actual bias; but a hypothetical opinion, founded on hearsay or information supposed to be true, unaccompanied with malice or ill will, does not disqualify a juror, and is not a cause of challenge for either actual or implied bias.

Implied bias.

A challenge for implied bias may be taken for all or any of the following causes, and for no other:

First—Consanguinity or affinity within the fourth degree to the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or to the defendant;

Second—Standing in the relation of guardian and ward, attorney and client, master and servant, or landlord and tenant, or being a member of the family of the defendant, or of the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or in his employment on wages;

Third—Being a party adverse to the defendant in a civil action, or having complained against or been accused by him in a criminal prosecution;

Fourth—Having served on a trial jury which has tried another person for the offense charged in the same complaint;

Fifth—Having been one of the jury formerly sworn to try the same complaint, and whose verdict was set aside, or which was discharged without a verdict, after the case was submitted to it;

Sixth—Having served as a juror in a civil action brought against the defendant for the act charged as an offense;

Seventh—Having formed or expressed an unqualified opinion or belief that the prisoner is guilty or not guilty of the offense charged.

(2316.) SEC. 50. An exemption from service on a jury is not a cause of challenge, but the privilege of the juror. **Exemption not cause of challenge.**

(2317.) SEC. 51. The court must administer to a jury the following oath: "You do swear that you will well and truly try this issue between the people of the Territory of Utah, and A. B the defendant, and a true verdict render according to the evidence." **Oath of jurors.**

(2318.) SEC. 52. After the jury are sworn, they must sit together and hear the proofs and allegations of the parties, which must be delivered in public and in the presence of the defendant. **Trial, how conducted.**

(2319.) SEC. 53. The court must decide all questions of law which may arise in the course of the trial, but can give no charge with respect to matters of fact. **Court must decide questions of law.**

(2320.) SEC. 54. After hearing the proofs and allegations, the jury may decide in court, or may retire for consideration. If they do not immediately agree, an officer must be sworn to the following effect: "You do swear that you will keep this jury together in some quiet and convenient place; that you will not permit any person to speak **Jury may decide in court or retire.** **Oath of officer on their retirement.**

to them, nor speak to them yourself, unless by order of the court, or only to ask them whether they have agreed upon a verdict; and that you will return them into court when they have so agreed, or when ordered by the court."

Verdict of jury, how delivered and entered.

(2321.) SEC. 55. When the jury have agreed on their verdict, they must deliver it publicly to the court, who must enter, or cause it to be entered, in the minutes.

Verdict when several defendants are tried together.

(2322.) SEC. 56. When several defendants are tried together, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment must be entered accordingly, and the case as to the rest may be tried by another jury.

When jury to be discharged without verdict.

(2323.) SEC. 57. The jury cannot be discharged after the cause is submitted to them, until they have agreed upon and rendered their verdict, unless for good cause the court sooner discharges them.

If discharged, defendant may be tried again.

(2324.) SEC. 58. If the jury is discharged, as provided in the last section, the court may proceed again to the trial, in the same manner as upon the first trial, and so on, until a verdict is rendered.

Proceedings on plea of guilty or conviction.

(2325.) SEC. 59. When the defendant pleads guilty, or is convicted, either by the court or by a jury, the court must render judgment thereon of fine and imprisonment, or both, as the case may be.

Judgment of fine may direct imprisonment.

(2326.) SEC. 60. A judgment that the defendant pay a fine may also direct that he be imprisoned and kept at hard labor until the fine is satisfied, in the proportion of one day's imprisonment for every one dollar of the fine.

When defendant is acquitted, to be discharged.

(2327.) SEC. 61. When the defendant is acquitted, either by the court or by the jury, he must be immediately discharged; and if the court find that the prosecution was malicious or without probable cause, it may order the prosecutor to pay the costs of the action, and all damages the defendant may have sustained.

Judgment, when to be rendered.

(2328.) SEC. 62. After a plea or verdict of guilty, or after a verdict against the defendant, on a plea of a former conviction or acquittal, the court must appoint a time for rendering judgment, which must not be more than two days after the verdict is rendered, and must hold the defendant to bail to appear for judgment, and in default of bail he must be committed.

New trial, when may move for.

(2329.) SEC. 63. At any time before judgment, defendant may move for a new trial or in arrest of judgment.

(2330.) Sec. 64. A new trial may be granted in the following cases: Grounds of.

First—When the jury has received any evidence out of court.

Second—When the jury has separated without leave of the court, after having retired to deliberate upon their verdict, or been guilty of any misconduct tending to prevent a fair and due consideration of the case;

Third—When the verdict has been decided by lot, or by any means other than a fair expression of opinion on the part of the jurors;

Fourth—When there has been error in the decision of the court, given on any question of law affecting the trial.

Fifth—When the verdict is contrary to law or evidence;

Sixth—When new evidence is discovered material to the defendant, and which he could not, with reasonable diligence, have discovered and produced at the trial; but when a motion for a new trial is made upon this ground, the defendant must produce at the hearing the affidavits of the witnesses by whom such newly discovered evidence is expected to be given.

(2331.) Sec. 65. The motion in arrest of judgment may be founded on any substantial defect in the complaint, and the effect of an arrest of judgment is to place the defendant in the same situation in which he was before the trial was had. Grounds of motion in arrest of judgment.

(2332.) Sec. 66. If the judgment is not arrested, or a new trial granted, judgment must be pronounced at the time appointed and entered in the minutes of the court. Judgment, when given and entered.

(2333.) Sec. 67. If judgment of acquittal is given, or judgment imposing a fine only, without imprisonment for non-payment, and the defendant is not detained for any other legal cause, he must be discharged as soon as the judgment is given. When defendant to be discharged on judgment.

(2334.) Sec. 68. When a judgment of imprisonment is entered, a certified copy thereof must be delivered to the proper officer, which is a sufficient warrant for its execution. Judgment of imprisonment, how executed.

(2335.) Sec. 69. When a judgment is entered imposing a fine, or ordering the defendant to be imprisoned until the fine is paid, he must be held in custody during the time specified in the judgment, unless the fine is sooner paid. When defendant ordered to be imprisoned until fine paid.

(2236.) Sec. 70. Upon payment of the fine, the officer must discharge the defendant, if he is not detained for any Fines, disposition of.

other legal cause, and pay the money, within ten days, into the county treasury.

Defendant may be admitted to bail.

(2337.) SEC. 71. The defendant, at any time after his arrest, and before conviction, may be admitted to bail.

"Admission to bail" defined.

(2338.) SEC. 72. Admission to bail is the order of a competent court or magistrate that the defendant be discharged from actual custody upon bail.

In what bail consists.

(2339.) SEC. 73. The taking of bail consists in the acceptance, by a competent court or magistrate, of the undertaking, of sufficient bail for the appearance of the defendant, according to the terms of the undertaking, or that the bail will pay to the people of this Territory a specified sum.

When admitted to bail before conviction.

(2340.) SEC. 74. The defendant may be admitted to bail before conviction:

First—For his appearance before the magistrate on the examination of the charge, before being held to answer;

Second—To appear at the court to which the magistrate is required to return the depositions and statement, upon the defendant being held to answer after examination; and after conviction, and upon an appeal:

If the appeal is from a judgment imposing a fine only, on the undertaking of bail that he will pay the same, or such part of it as the appellate court may direct, if the judgment is affirmed or modified, or the appeal is dismissed.

If judgment of imprisonment has been given, that he will surrender himself in execution of the judgment, upon its being affirmed or modified, or upon the appeal being dismissed.

Who may admit to bail.

(2341.) SEC. 75. In the cases in which defendant may be admitted to bail upon an appeal, the order admitting him to bail may be made by the magistrate. The bail must possess the qualifications prescribed by this act.

Deposit, when and how made.

(2342.) SEC. 76. The defendant, at any time after an order admitting him to bail, instead of giving bail, may deposit with the magistrate or court, in which he is held to answer, the sum mentioned in the order and upon delivering to the officer in whose custody he is, a certificate of the deposit, he must be discharged from custody.

May make deposit after bail is given before forfeiture.

(2343.) SEC. 77. If the defendant has given bail, he may, at any time before the forfeiture of the undertaking, in like manner deposit the sum mentioned in the recognizance, and upon the deposit being made the bail is exonerated.

(2344.) SEC. 78. When money has been deposited, if it remains on deposit at the time of a judgment for the payment of a fine, the court must apply the money in satisfaction thereof, and after satisfying the fine and costs, must refund the surplus, if any, to the defendant.

Deposit to be applied to payment of judgment.

SURRENDER OF THE DEFENDANT.

(2345.) SEC. 79. At any time before the forfeiture of their undertaking the bail may surrender the defendant in their exoneration, or he may surrender himself, to the officer to whose custody he was committed at the time of giving bail, in the following manner:

Surrender, by whom, when and how made.

First—A certified copy of the undertaking of the bail must be delivered to the officer, who must detain the defendant in his custody thereon as upon a commitment, and by a certificate in writing acknowledge the surrender;

Second—Upon the undertaking and the certificate of the officer, the court in which the action or appeal is pending must order that the bail be exonerated, and on filing the order and the papers used on the application, they are exonerated accordingly.

(2346.) SEC. 80. For the purpose of surrendering the defendant, the bail, at any time before they are finally discharged, and at any place within the Territory, may themselves arrest him, or by a written authority, endorsed on a certified copy of the undertaking, may empower any person of suitable age and discretion to do so.

By whom the defendant may be arrested for the purpose of surrender.

(2347.) SEC. 81. If money has been deposited instead of bail, and the defendant, at any time before the forfeiture thereof, surrenders himself to the officer to whom the commitment was directed, in the manner provided in the last two sections, the court must order a return of the deposit to the defendant, upon producing the certificate of the officer showing the surrender.

On a surrender before forfeiture money deposited to be refunded, etc.

FORFEITURE OF THE UNDERTAKING OF BAIL OR OF THE DEPOSIT OF MONEY.

(2348.) SEC. 82. If, without sufficient excuse, the defendant neglects to appear for trial or judgment, or upon any other occasion when his presence in court may be lawfully required, or to surrender himself in execution of the judgment, the magistrate must direct the fact to be entered upon its minutes, and the undertaking of bail, or the money deposited instead of bail, as the case may be, is thereupon

In what cases, and how ordered.

declared forfeited. But if at any time before the final adjournment of the court, the defendant or his bail appear and satisfactorily excuse his neglect, the court may direct the forfeiture of the undertaking or the deposit to be discharged upon such terms as may be just.

Forfeiture to be enforced by action.

(2349.) SEC. 83. If the forfeiture is not discharged, as provided in the last section, the prosecuting attorney may at any time after the adjournment of the court proceed by action only against the bail upon their undertaking.

Deposit when forfeited, how disposed of.

(2350.) SEC. 84. If, by reason of the neglect of the defendant to appear, money deposited instead of bail is forfeited, and the forfeiture is not discharged or remitted, the magistrate with whom it is deposited must, immediately after the final adjournment of the court, pay over the money deposited into the county treasurer of the county in which the offense was committed.

Magistrates may admit to bail.

(2351.) SEC. 85. When the defendant has been held to answer upon an examination for a public offense, the admission to bail may be by the magistrate by whom he is so held, or by any magistrate who has power to issue the writ of *habeas corpus*.

Bail, how put in and form of undertaking.

(2352.) SEC. 86. Bail is put in by a written undertaking, executed by two sufficient sureties (with or without the defendant, in the discretion of the magistrate), and acknowledged before the court or magistrate, in substantially the following form: An order having been made on the day of , A. D. , by A. B., a justice of the peace of county (or as the case may be), that C. D. be held to answer upon a charge of (stating briefly the nature of the offense), upon which he has been admitted to bail in the sum of dollars; we, E. F. and G. H. (stating their place of residence and occupation), hereby undertake that the above named C. D. will appear and answer the charge above mentioned, in whatever court it may be prosecuted, and will at all times hold himself amenable to the orders and process of the court, and if convicted, will appear for judgment and render himself in execution thereof, or if he fails to perform either of these conditions, that we will pay to the people of the Territory of Utah the sum of dollars (inserting the sum in which the defendant is admitted to bail).

Qualifications of bail.

(2353.) SEC. 87. The qualifications of bail are as follows:

First—Each of them must be a resident, and householder, or freeholder within the Territory; but the court or magistrate may refuse to accept any person as bail who is not a resident of the county in which the offense was committed where bail is offered;

Second—They must each be worth the amount specified in the undertaking, exclusive of property exempt from execution; but the court or magistrate, on taking bail, may allow more than two sureties to justify severally in amounts less than that expressed in the undertaking, if the whole justification be equivalent to that of sufficient bail.

Bail, how to justify.

(2354.) SEC. 88. The bail must in all cases justify by affidavit taken before the magistrate, that they each possess the qualifications provided in the preceding section. The magistrate may further examine the bail upon oath concerning their sufficiency, in such manner as he may deem proper.

On allowance of bail defendant to be discharged.

(2355.) SEC. 89. Upon the allowance of bail, and the execution of the undertaking, the magistrate must, if the defendant is in custody, make and sign an order for his discharge upon the delivery of which to the proper officers the defendant must be discharged.

Magistrates may issue subpœnas and punish disobedience.

(2356.) SEC. 90. The magistrates' courts mentioned in this act may issue *subpœnas* for witnesses; and punish disobedience thereof, as provided by law. The provisions of the preceding section in respect to entitling affidavits, are applicable to the proceedings of the courts mentioned in this act. And the foregoing provisions may be applied to magistrates' courts when proceeding for a violation of the ordinances of incorporated cities, but in such cases the above provisions are to be regarded as cumulative only, and shall not be construed to prevent them proceeding in pursuance of such regulations as may have been or may be established by any city: *Provided*, however, that when proceeding for a violation of such ordinances under the above provisions, no change of the place of trial shall be allowed the accused.

APPEALS TO DISTRICT COURTS.

Who may appeal, and for what cause.

(2357.) SEC. 91. Either party may appeal to the district court of the district in which the county is situated, from a judgment of a magistrate, in like cases and for like cause as appeals may be taken to the supreme court, from a judgment of a district court.

Within what time appeal must be taken

(2358.) SEC. 92. The appeal must be taken within thirty days after judgment is rendered, and shall be taken, heard and determined as prescribed in an act to regulate the manner of appeal from the district courts to the supreme court in criminal actions and for other purposes.

Upon what grounds appeal to be heard.

(2359.) SEC. 93. The appeal to the district court from the judgment of a magistrate's court is heard upon a statement of the case embodying such rulings of the court as are excepted to, which statement must be filed with and settled by the court within five days after filing notice of appeal.

If new trial granted, where to be heard.

(2360.) SEC. 94. If a new trial is granted upon appeal, it must be had in the magistrate's court, unless the district court otherwise order. A copy of the order granting a new trial must be remitted to that court, and the trial had therein.

Proceedings if appeal dismissed or judgment affirmed.

(2361.) SEC. 95. If the appeal is dismissed or the judgment affirmed, a copy of the order must be remitted to the court below, which may proceed to enforce its sentence.

OF COUNTY JAILS.

County jails, by whom kept and for what used.

(2362.) SEC. 96. The common jails in the several counties of this Territory shall be kept by the sheriffs of the counties in which they are respectively situated, and shall be used as follows:

First—For the detention of persons committed in order to secure their attendance as witnesses in criminal cases.

Second—For the detention of persons charged with crime and committed for trial.

Third—For the confinement of persons committed for contempt, or upon civil process, or by other authority of law.

Fourth—For the confinement of persons sentenced to imprisonment therein upon a conviction for crime.

Prisoners to be classified.

(2363.) SEC. 97. Persons committed on criminal process and detained for trial, persons convicted and under sentence, and persons committed upon civil process, must not be kept or put in the same room, nor shall male and female prisoners (except husband and wife) be kept or put in the same room.

Sheriff to receive prisoners committed by United States courts.

(2364.) SEC. 98. The sheriff must receive and keep in the county jail, any prisoner committed thereto by process or order issued under the authority of the United States, until he is discharged according to law, as if he had been committed under process issued under the authority of this Territory; provision being made by the United States for the support of such prisoners.

Sheriff or jailor answerable for their safe keeping.

(2365.) SEC. 99. A sheriff, to whose custody a prisoner is committed, as provided in the last section, is answerable for his safe keeping in the courts of the United States, according to the laws thereof.

County court to provide suitable place for keeping prisoners.

(2366.) SEC. 100. When there is no jail in the county, or when the jail becomes unfit or unsafe for the confinement of prisoners, the county court may, by an order, designate or provide a suitable place for the confinement of their prisoners.

Papers served on jailor for prisoner.

(2367.) SEC. 101. A sheriff or jailor upon whom a paper in a judicial proceeding, directed to a prisoner in his custody, is served, must forthwith deliver it to the prisoner, with a note thereon of the time of its service. For a neglect to do so he is liable to the prisoner for all damages occasioned thereby.

Guard for jail.

(2368.) SEC. 102. The sheriff, when necessary, may, with the assent in writing of the probate judge, or in a city, of the mayor thereof, employ a temporary guard for the protection of the county jail, or city prison, or for the safe keeping of prisoners, the expenses of which are a Territorial, county, or a city charge, as the case may be.

Sheriff to receive all persons duly committed.

(2369.) SEC. 103. The sheriff must receive all persons committed to jail by competent authority, and provide them with necessary food, clothing, and bedding, for which he shall be allowed a reasonable compensation, to be determined by the county court, and, except as provided in the next section, to be paid out of the county treasury.

Prisoners on civil process, when not to be received.

(2370.) SEC. 104. Whenever a person is committed upon process in a civil action or proceeding, except when the people of this Territory are a party thereto, the sheriff is not bound to receive such person, unless security is given on the part of the party at whose instance the process is issued, by a deposit of money, to meet the expenses for him of necessary food, clothing, and bedding, or to detain such person any longer than these expenses are provided for. This section does not apply to cases where a party is committed as a punishment for disobedience to the mandates, process, writs, or orders of court.

Prisoners may be required to labor.

(2371.) SEC. 105. Persons confined in the county jail under a judgment of imprisonment rendered in a criminal action or proceeding, may be required by an order of the county court to perform labor on the public works or other works of the county.

Rules and regulations may be prescribed.

(2372.) SEC. 106. The county court making such order may prescribe and enforce the rules and regulations under which such labor is to be performed.

Persons confined in city jails may be required to labor.

(2373.) SEC. 107. Persons confined in any city jail, under a judgment of imprisonment and rendered in an action or proceeding for violating a city ordinance, may be required by ordinance to perform labor on the public works or other work of the city. The city council making any such ordinance may prescribe and enforce rules and regulations under which such labor is to be performed.

Limitation on preceding sections.

(2374.) SEC. 108. No person confined under a judgment of imprisonment whether in a county or a city jail shall be required to perform labor more than ten hours a day, nor on Sunday.

Persons convicted of violating city ordinance may be confined in county jail.

(2375.) SEC. 109. Every person convicted of violating an ordinance of an incorporated city and sentenced to confinement in a jail, may be imprisoned either in the county or city jail as may be provided by any such ordinance. If confined in a county jail it must be at the expense of the city and subject to the regulations of the county court.

TITLE XXIII.

FEES.

SECTION.
2376. Fees and compensation of officers.
2377. Notaries public.
2378. Clerks of district courts.
2379. Clerks of probate courts.
2380. County clerks.
2381. Judges of probate.
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SECTION.
2386. Justices of the peace.
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2388. District attorneys.
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2390. Sealer of weights and measures.
2391. Fees for other services.
2392. Interpreters.
2393. Greater fees forbidden.
2394. "Folio" defined.

An Act to regulate fees and compensation for official and other services in the Territory of Utah.

[*Approved February* 20, 1874.]

Fees and compensation of officers.

(2376.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That the fees and compensation of the several officers and persons herein named, shall be as follows:

OF NOTARIES PUBLIC.

Notaries public.

	$	cts
(2377.) SEC. 2. For protesting the non-payment of a promissory note, or non-payment or non-acceptance of a bill of exchange, draft or check,.........	1	00
For drawing and serving each notice of non-payment of a promissory note, or the non-payment, or non-acceptance of a bill of exchange, order, draft or check,......................................		35
For recording every protest,.................		50
For drawing an affidavit, deposition, or other paper, for which provision is not herein made, for first folio,..................................		50
For each subsequent folio,..................		15
For taking an acknowledgment or proof of a deed, or other instrument, to include the seal and writing of the certificate, for the first signature,.....		50

	$	cts
For each additional signature,		25
For administering an oath or affirmation,		25
For every certificate, to include writing the same, and the seal,		50

OF CLERKS OF THE DISTRICT COURT.

Clerks of district courts.

(2378.) SEC. 3. For entering each suit on the clerk's register of actions,		20
For every case on the calendar, and making a copy thereof for the bar, for each term of the court,		30
For entering every motion, rule, order or default,		20
For issuing every summons,		50
For issuing every writ of attachment,	1	00
For issuing every *subpœna* for witnesses,		25
Provided, if more than three names are included in any one *subpœna*, for each additional name,		10
For filing each paper,		10
For calling and swearing each jury,		30
For receiving and entering each verdict of a jury,		25
For entering every final judgment, for the first folio,		40
For each subsequent folio,		15
For filing judgment roll,		10
For entering satisfaction of judgment.		25
For entering judgment on judgment docket,		25
For administering each oath or affirmation, other than to witnesses in court,		25
To each witness in court,		10
For certifying every oath or affirmation, including seal,		25
For copy of any proceeding, record or paper, for the first folio,		30
For each subsequent folio,		15
For every certificate under seal,		50
For issuing every commission to take testimony,		75
For taking down testimony during trial, for each folio (to be paid by the party requiring the same),		20
For issuing every execution,		50
For issuing every decree or order of sale of mortgaged property,	1	00

	$	cts
For issuing every writ of injunction, *mandamus*, *certiorari* or prohibition,		75
For taking each bond required by law, and the justification thereto,		75
For acknowledgment of deed or other instrument, for first signature,		50
For each additional signature,		25
For entering return of attachment, execution or other process,		50
For polling each jury,		25
For entering appearance,		20
When the court is sitting as a court of criminal jurisdiction on Territorial business, for attendance on said court, per day,	3	00
He shall receive no other fees or compensation for any services whatever, in a criminal action or proceeding, except for copies of papers, for each folio,		15

Fees of district clerks in criminal cases, when the same cannot be collected from the defendant, shall be paid out of the Territorial treasury on voucher properly certified to by the court, and approved by the auditor of public accounts.

In all civil actions the clerk shall require the party commencing the suit to pay in advance, or secure by bond with security, the payment of the probable amount of the costs of said suit: *Provided*, however, that the said costs shall, at the conclusion of the trial, be paid by the party against whom said costs are adjudged by the court.

In all cases the clerk shall keep a fee book and keep an itemized account of the fees of plaintiff and defendant, in separate columns, and when an execution is issued a copy of said account shall accompany said execution.

OF CLERKS OF THE PROBATE COURT.

Clerks of probate courts.

	$	cts
(2379.) SEC. 4. For filing all papers sent on appeal from justices' courts, in each case, and making the necessary entries concerning the same,		50
For all other services, except those hereinafter specified, the same fees as are allowed to a district clerk for similar services.		
For issuing letters testamentary, or of administration,	1	00

	$ cts
For filing petition in the commencement of an action,	1 00
For certificate of appointment of appraisers, or guardians, for each person,	50
For writing and posting notices, when required, for each copy,	25 cts
For notice given by publication, in addition to the costs of publication,	25 cts
For recording wills, per folio,	25 cts

County clerks

(2380.) Sec. 5. The compensation of county clerks shall be by salary, the amount to be determined by the county court.

The compensation of the members of the county courts shall be, per day, for actual attendance,	3 00
And mileage, for each mile of actual necessary travel between their residences and the place of holding court,	10

OF JUDGES OF PROBATE.

Judges of probate.

(2381.) Sec. 6. For granting letters of administration or probate of wills,	1 00
When the same are contested,	1 00
Hearing a complaint against spendthrift or lunatic,	1 00
Appointing a guardian for minor or lunatic,	50
Decree for probate of wills,	75
When contested,	1 00
Decree for settlement of estate,	50
Order of distribution,	50
Examining and allowing inventory, for the first page,	25
Every succeeding page,	10
Any writ or process issued under seal,	25
Examining and allowing accounts, not exceeding one page,	25
Every additional page,	10
Warrant to appraise or divide estate,	25
Issuing commission to receive and examine claims of creditors when an estate is represented insolvent,	25
Allowing an appeal,	25
Approving securities of executor or administrator,	25

	$	cts
Assigning personal estate to widow,		25
Dissallowance of application for letters of administration, or probate of will, to be paid by the losing party,		75
For every continuance,		15
Order for sale of personal estate,		25
Certificate of necessity for sale of real estate,		25
Extending letters of administration,		50
For bonds upon letters of administration, or appointment of guardian,		50
Probate of will and letters testamentary thereon,		50
Drawing a decree respecting the probate of will or codicil,		50
Bond for the execution,		25
Drawing order of distribution,		25
A quietus,		25
Filing each paper,		5
Administering an oath,		5
Recording all papers required by law to be recorded, for every one hundred words,		15
Appeal or other bonds,		25
A warrant to divide an intestate estate among the heirs, or a warrant to receive and examine the claims of an insolvent estate,		25
A citation or summons, for the first person named therein,		25 cts
Each other person named therein,		10
Entering and filing a *caveat*,		15
To apportion an insolvent estate among the creditors,		75
Seal of exemplification,		15
When a translation of any will, deed, or other writing is required, he shall be entitled to receive for every one hundred words,		25
When sitting on civil or criminal cases, per day,	3	00
Hearing each divorce case,	5	00

OF COUNTY RECORDERS.

County recorders.

(2382.) SEC. 7. For recording any instrument, paper or notice, for the first folio, to include the necessary filing, indexing, and an abstract of the title of the land, or mining claims conveyed in transfers, said abstract to be written in a book kept for that purpose, ... 50

	$	cts
For each additional folio,		20
For copies of any record or paper, per folio, including seal and certificate,		25
For every entry of discharge of mortgage on margin of record,		25
For recording every town plot, for each lot,		15
For taking and writing acknowledgment, including seal, for the first signature,		50
For each additional signature,		25
For filing and entering minutes of certificate of sheriff's sale,		50
For filing and entering minutes of certificate of tax sale,		50
For filing and keeping each paper not required to be recorded, and endorsing the same,		25

All persons interested shall have access during business hours to all records in the custody of county recorders free of charge.

OF MARSHALS AND SHERIFFS.

Marshals and sheriffs.

	$	cts
(2383.) Sec. 8. For serving summons in civil suit, or in any other process by which an action or proceeding is commenced, on each defendant,	1	00
For traveling in making service, per mile, in going only, to be computed in all cases from the place of holding court: *Provided*, that if two or more papers require to be served, in the same suit, at the same time, one mileage only shall be charged,		20
For taking bond or undertaking in any case in which he is authorized to take the same, including justification,		75
For serving every notice, rule or order,		50
For copy of any writ, process, or other paper, when demanded or required by law, per folio,		25
For serving a *subpœna*, for each witness summoned,		25
For traveling, per mile, in serving said *subpœna*, in going only,		20
For summoning each juror,		25
And mileage, one way only,		20
For serving an attachment on property, or levying an execution, or executing an order of arrest, or an order for the delivery of personal property, and with traveling fees as on a summons,	2	00

	$ cts
No traveling fees shall be allowed on such attachment, order of arrest, or order for the delivery of personal property, when the same accompanies the summons in the suit, and may be executed at the time of the service of summons, unless for the distance actually traveled beyond that required to serve the summons.	
For serving an attachment upon any ship, boat or vessel, in proceedings to enforce any lien thereon created by law,..........................	5 00
For making and posting notices, and advertising property for sale on execution, or under any judgment or order of sale, not to include the cost of publication in a newspaper,......................	1 00
For commissions for receiving and paying over money on execution or other process, when property has been sold, on all sums of two hundred dollars or less,..	3 pr.ct.
On all sums over two hundred dollars, and less than five hundred dollars,.........................	2 pr.ct.
On all sums over five hundred dollars, and under one thousand dollars,.........................	1 pr.ct.
And all sums over one thousand dollars,...½ of	1 pr.ct.
For commissions for receiving and paying over money on execution or other process, without levy, or when the lands or goods levied on shall not be sold, one-half of the fees above; the fees herein allowed for the levy of an execution, for advertising, and for making and collecting the money on process, and all fees not included in the judgment, shall be collected from the defendant by virtue of such process, in the same manner as the same therein are directed to be made.	
Provided, commission shall not be charged on more than one of the amounts above specified at one and the same time.	
For drawing and executing every marshal's or sheriff's deed, to be paid for by the grantee, who shall, in addition, pay for the acknowledgment thereof,...	2 00
For serving a writ of possession, or restitution, putting any person entitled into possession of premises, and removing occupant,......................	5 00
Mileage as provided for in the service of summons.	

	$ cts
For travel in the service of any process not hereinbefore mentioned, for each mile necessarily traveled on going only,	20
For attending, when required, on any district court, in person or by deputy to be paid out of the Territorial treasury, and when on any county or probate court, to be paid out of the county treasury, for each day,	3 00
For bringing up a prisoner on *habeas corpus* to testify, or for examination as to the cause of his arrest and detention, or to give bail, to include the return of the prisoner, if remanded,	3 00
Mileage, per mile, going only,	20
For holding a trial on the rights of property, when claimed by a third party, to include all services in the matter, except mileage,	10 00
For attending on the supreme court, either in person or by deputy, to be paid out of the Territorial treasury, as other claims, for each day,	3 00

OF CONSTABLES.

Constables. (2384.) SEC. 9. Constables shall be allowed the same fees as by this act are allowed to sheriffs for similar services, except as herein otherwise provided.

For collecting all sums of money on process,	5 pr. ct.

OF JURORS.

Jurors. (2385.) SEC. 10. For each day's attendance on any court of record of this Territory,	2 00
Mileage from residence to the place of holding court, one way only,	20
In a justice's court, or coroner's inquest,	1 50

Jurors shall be paid out of the county treasury of the county wherein they reside, except when serving in civil cases, and it shall be the duty of the clerk of the district court, at the close of each term of said court, to make out and give to each juror a certificate certifying the number of days' attendance of, the number of miles traveled, and amount of compensation due to said juror in criminal cases, which certificate upon being presented to the county court of the county from which said juror was summoned, shall entitle him to be allowed and paid by said county.

When acting as coroner.

Justices of the peace.

	$	cts
(2386.) SEC. 11. For viewing each body, taking and returning inquest to probate court,.........	5	00

Fees in criminal cases.

	$	cts
For warrant of arrest, or search warrant,.......		50
For commitment to jail,......................		50
For affidavit,..................................		25
For taking recognizance,.......................		50
Entering judgment for fine or other punishment,..		50 cts
Order of discharge to jailor,....................		25

In civil cases.

	$	cts
For filing each paper,............................		10
For issuing any writ or process by which a suit is commenced,..		50
For entering cause upon the docket,...........		25
For issuing *subpœna*, including all witnesses required,..		25
For administering oath or affirmation other than to witnesses,................................		25
For swearing each witness,......................		10
For issuing writ of attachment, or arrest, or for the delivery of property,...........................		50
For entering final judgment,....................		50
For taking and approving any bond or undertaking, directed by law to be taken or approved by him,..		25
For swearing a jury,............................		25
For taking depositions, per folio,.............		25
For entering satisfaction of judgment,.........		25
For copy of any judgment, order, docket, proceeding, or paper, in his office, for each folio,......		15
For issuing commission to take testimony,.....		50
For making up and transmitting transcript on appeal, which shall be the only charge,...........	1	50
For issuing an execution,......................		25
For taking bail after examination in criminal cases,..		50
For entering cause without process,...........		50
For entering judgment by confession,..........		50

	$	cts
When sitting on civil or criminal cases, per day,(1)	3	00

OF WITNESSES.

Witnesses.

	$	cts
(2387.) SEC. 12. For each day's attendance before a justice of the peace,	1	00
Before any other courts of this Territory,	1	50
Mileage, one way only, from his place of residence to the place of holding court, per mile,		20

Provided, witness' fees shall, in every instance, not be taxed unless the witness appear before the clerk within two days after the trial and claim his fees.

And further provided, that no witness shall be compelled to attend any court in civil cases unless he shall receive in advance, from the party *subpœnaing* him, his mileage and his fee for one day's attendance, and shall not be required to remain in court longer than one day, unless he is paid in advance for each day's attendance.

OF DISTRICT ATTORNEYS.

District attorneys.

	$	cts
(2388.) SEC. 13. District attorneys shall receive an annual compensation of, in the first district, including office rent, stationery, fuel and lights,	750	00
In the second district, including office rent, stationery, fuel and lights,	750	00
In the third district, including office rent, stationery, fuel and lights,	1,500	00

OF SURVEYORS.

Surveyors.

	$	cts
(2389.) SEC. 14. For surveying twenty acres,	2	50
For surveying thirty acres,	2	65
For surveying forty acres,	3	75
For surveying sixty acres,	4	40
For surveying eighty acres,	5	00
For surveying one hundred acres,	5	65
For surveying one hundred and twenty acres,	6	00
For surveying one hundred and sixty acres,	6	25
For surveying three hundred and twenty acres,	8	50
For surveying six hundred and forty acres,	10	65

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(1) As amended Feb. 15, 1876.

And for traveling to and from, ten cents per mile: *Provided*, that if more than one piece is surveyed at the same time, the traveling fees for mileage shall be apportioned according to equity: *Provided*, that if the route shall be rough, in such case, shall be allowed fees in proportion, to make it equal to a good route.

OF SEALERS OF WEIGHTS AND MEASURES.

Sealer of weights and measures.

(2390.) SEC. 15. The fees for sealing weights and measures shall be as follows:

For each examination, testing, sealing and certifying as required from the owner of the same, viz:

	$	cts
For any steelyards, beam, ground, floor, platform, counter, or other scales, by which may be weighed not exceeding one hundred pounds,.......		75
For any such instrument, by which may be weighed over one hundred pounds, and less than six hundred pounds,................................	1	00
Over six-hundred pounds,....................	1	50
For any nests or sets of measures,............		75
For any yard stick, dry or liquor measure,.....		25

And the weights attached to any scales shall, as to the compensation of the sealer of weights and measures, be considered as part of the scales: *Provided*, that where any such weights, measures or instruments, upon subsequent examination, be found correct, and shall not require to be stamped a second time, the aforesaid sealer of weights and measures shall not receive more than one-half the compensation provided for.

The sealer of weights and measures shall examine and test any of the before mentioned instruments for weighing or measuring, on application by any person who shall tender to him the fee which, by the preceding section he is authorized to receive, and he shall, in every case where he may employ labor or material in making accurate weights or measures, be entitled to extra compensation therefor, and to retain the article upon which such labor or material has been employed until such compensation be paid.

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Fees for other services.

(2391.) SEC. 16. Fees for any necessary services not mentioned in this act shall correspond with, and not exceed the fees herein allowed.

Interpreters.

(2392.) SEC. 17. Interpreters and translators shall be allowed, per day, and the same mileage as witnesses, ... 5 00

Greater fees forbidden.

(2393.) SEC. 18. If any officer shall take greater fees than are herein allowed, he shall be liable to indictment, and on conviction, shall be removed from office, and shall be fined in any sum not exceeding one thousand dollars, or be imprisoned not exceeding six months, or both fine and imprisonment at the discretion of the court.

"Folio" defined.

(2394.) SEC. 19. By "folio," as used in this act, is intended one hundred words.

UNITED STATES FEE BILL.

By an act of Congress, approved June 23, 1874 [see section 7, page 56], the following fee bill, so far as applicable, is extended over the Territory of Utah, and for convenience is inserted in this compilation in connection with the Territorial fee bill.

FEES.

[Revised Statutes of the United States, page 153.]

SECTION.
823. Fees to be taxed.
824. Attorneys, solicitors and proctors.
825. Fees in revenue cases and in suits on official bonds.
826. Fees on bond, when not allowed.
827. Fees of district attorney for defense of revenue officers.
828. Clerks' fees, books in clerks' offices open to inspection.
829. Marshals' fees.
847. Commissioners' fees.
848. Witnesses' fees.

SECTION.
849. No officer of court to have witness' fees.
850. Expense of clerks, etc., sent away as witnesses.
852. Fees of grand and petit jurors.
853. Printers' fees.
854. "Folio" defined.
855. Jurors and witnesses, when paid by marshal.
856. Fees of district attorneys, marshals, etc., how paid.
857. Fees, how recovered.

Fees to be taxed.

SEC. 823. The following and no other compensation shall be taxed and allowed to attorneys, solicitors, and proctors in the courts of the United States, to district attorneys, clerks of the circuit and district courts, marshals, commissioners, witnesses, jurors, and printers in the several States and Territories except in cases otherwise expressly provided by law. But nothing herein shall be construed to prohibit attorneys, solicitors, and proctors from charging to and receiving from their clients, other than the government, such reasonable compensation for their services, in addition to the taxable costs, as may be in accordance with general usage in their respective States, or may be agreed upon between the parties.

FEES OF ATTORNEYS, SOLICITORS, AND PROCTORS.

Attorneys, solicitors and proctors.

SEC. 824. On a trial before a jury in civil or criminal causes or before referees, or on a final hearing in equity or admiralty, a docket fee of twenty dollars: *Provided*, that in cases of admiralty and maritime jurisdiction, where the libelant recovers less than fifty dollars, the docket fee of his proctor shall be but ten dollars.

In cases at law where judgment is rendered without a jury, ten dollars.

In cases at law, when the cause is discontinued, five dollars.

For *scire facias*, and other proceedings on recognizances, five dollars.

For each deposition taken and admitted in evidence in a cause, two dollars and fifty cents.

For services rendered in cases removed from a district to a circuit court by writ of error or appeal, five dollars.

For examination by a district attorney before a judge or commissioner, of persons charged with crime, five dollars a day for the time necessarily employed.

For each day of his necessary attendance in a court of the United States on the business of the United States, when the court is held at the place of his abode, five dollars; and for his attendance when the court is held elsewhere, five dollars for each day of the term.

For traveling from the place of his abode to the place of holding any court of the United States in his district or to the place of any examination before a judge or commissioner, of a person charged with crime, ten cents a mile for going and ten cents a mile for returning. When an indictment for crime is tried before a jury and a conviction is had, the district attorney may be allowed, in addition to the attorneys' fees herein provided, a counsel fee, in proportion to the importance and difficulty of the cause, not exceeding thirty dollars.

Fees in revenue cases, and in suits on official bonds.

SEC. 825. There shall be taxed and paid to every district attorney two per centum upon all moneys collected or realized in any suit or proceedings arising under the revenue laws, and conducted by him, in which the United States is a party, which shall be in lieu of all costs and fees in such proceeding.

Fees on bonds when not allowed.

SEC. 826. No fee shall accrue to any district attorney on any bond left with him for collection or in a suit commenced on any bond for the renewal of which provision is made by law, unless the party neglects to apply for such renewal for more than twenty days after the maturity of the bond.

Fees of district attorney for defense of revenue officers.

SEC. 827. When a district attorney appears by direction of the Secretary or Solicitor of the Treasury, on behalf of any officer of the revenue in any suit against such officer, for any act done by him, or for the recovery of any money received by him, and paid into the Treasury in the performance of his official duty, he shall receive such compensation as may be certified to be proper by the court in which the suit is brought, and approved by the Secretary of the Treasury.

CLERKS' FEES.

Clerks' fees.

SEC. 828. For issuing and entering every process, commission, summons, *capias*, execution, warrant, attachment, or other writ, except a writ of *venire*, or a summons or *subpœna* for a witness, one dollar.

For issuing a writ of summons or *subpœna*, twenty-five cents.

For filing and entering every declaration, plea, or other paper, ten cents.

For administering an oath or affirmation, except to a juror, ten cents.

For taking an acknowledgment, twenty-five cents.

For taking and certifying depositions to file, twenty cents for each folio of one hundred words.

For a copy of such deposition furnished to a party on request, ten cents a folio.

For entering any return, rule, order, continuance, judgment, decree, or recognizance, or drawing any bond, or making any record, certificate, return, or report, for each folio, fifteen cents.

For a copy of any entry or record, or of any paper on file, for each folio, ten cents.

For making dockets and indexes, issuing *venire*, taxing costs, and all other services, on the trial or argument of a cause where issue is joined and testimony given, three dollars.

For making dockets, and indexes, taxing costs, and all other services, in a cause when issue is joined, but no testimony is given, two dollars.

For making dockets and indexes, taxing costs, and other services, in a cause which is dismissed or discontinued, or where judgment or decree is made or rendered without issue, one dollar.

For making dockets and taxing costs, in cases removed by writ of error or appeal, one dollar.

For affixing the seal of the court to any instrument, when required, twenty cents.

For every search for any particular mortgage, judgment, or other lien, fifteen cents.

For searching the records of the court for judgments, decrees, or other instruments constituting a general lien on real estate and certifying the result of such search, fifteen cents for each person against whom such search is required to be made.

For receiving, keeping, and paying out money, in pursuance of any statute or order of court, one per centum on the amount so received, kept, and paid.

For traveling from the office of the clerk, where he is required to reside, to the place of holding any court required by law to be held, five cents a mile for going and five cents for returning, and five dollars a day for his attendance on the court while actually in session.

Books in clerks' offices open to inspection.

All books in the offices of the clerks of the circuit and district courts, containing the docket or minute of the judgments, or decrees thereof, shall, during office hours, be open to the inspection of any person desiring to examine the same, without any fees or charge therefor.

MARSHALS' FEES.

SEC. 829. For service of any warrant, attachment, summons, *capias*, or other writ, except execution, *venire*, or a summons or *subpœna* for a witness, two dollars for each person on whom service is made. **Marshals' fees**

For the keeping of personal property attached on *mesne* process, such compensation as the court, on petition setting forth the facts under oath, may allow.

For serving *venires* and summoning every twelve men as grand or petit jurors, four dollars, or thirty-three and one-third cents each. In States where, by the laws thereof, jurors are drawn by lot, by constables, or other officers of corporate places, the marshal shall receive, for each jury, two dollars for the use of the officers employed in drawing and summoning the jurors and returning each *venire*, and two dollars for his own services in distributing the *venires*. But the fees for distributing and serving *venires*, drawing and summoning jurors by township officers, including the mileage chargeable by the marshal for each service, shall not at any court exceed fifty dollars.

For holding a court of inquiry or other proceedings before a jury, including the summoning of a jury, five dollars.

For serving a writ of *subpœna* on a witness, fifty cents; and no further compensation shall be allowed for any copy, summons, or notice for a witness.

For serving a writ of possession, partition, execution, or any final process, the same mileage as is allowed for the service of any other writ, and for making the service, seizing or levying on property, advertising and disposing of the same by sale, set-off, or otherwise according to law receiving and paying over the money, the same fees and poundage as are or shall be allowed for similar services to the sheriffs of the States, respectively, in which the service is rendered.

For each bail bond, fifty cents.

For summoning appraisers, fifty cents each.

For executing a deed prepared by a party or his attorney, one dollar.

For drawing and executing a deed, five dollars.

For copies of writs or papers furnished at the request of any party, ten cents a folio.

For every proclamation in admiralty, thirty cents.

For serving an attachment *in rem*, or a libel in admiralty, two dollars.

For the necessary expenses of keeping boats, vessels, or other property attached or libeled in admiralty, not exceeding two dollars and fifty cents a day.

When the debt or claim in admiralty is settled by the parties without a sale of the property, the marshal shall be entitled to a commission of one per centum on the first five hundred dollars of the claim or decree, and one-half of one per centum on the excess of any sum thereof over five hundred dollars: *Provided*, that, when the value of the property is less than the claim, such commission shall be allowed only on the appraised value thereof.

For sale of vessels or other property under process in admiralty, or under the order of a court of admiralty, and for receiving and paying over the money, two and one-half per centum on any sum under five hundred dollars, and one and one-quarter per centum on the excess of any sum over five hundred.

For disbursing money to jurors and witnesses, and for other expenses, two per centum.

For expenses while employed in endeavoring to arrest, under process, any person charged with or convicted of a crime, the sum actually expended, not to exceed two dollars a day, in addition to his compensation for service and travel.

For every commitment or discharge of a prisoner, fifty cents.

For transporting criminals, ten cents a mile for himself and for each prisoner and necessary guard; except in the case provided for in the next paragraph.

For transporting criminals convicted of a crime in any district or Territory where there is no penitentiary available for the confinement of convicts of the United States, to a prison in another district or Territory designated by the attorney general, the reasonable actual expense of transportation of the criminals, the marshal and the guards, and the necessary subsistence and hire.

For attending the circuit and district courts, when both are in session, or either of them when only one is in session, and for bringing in and committing prisoners and witnesses during the term, five dollars a day.

For attending examinations before a commissioner, and bringing in, guarding, and returning prisoners charged with crime, and witnesses, two dollars a day; and for each deputy not exceeding two, necessarily attending, two dollars a day.

For traveling from his residence to the place of holding court, to attend a term thereof, ten cents a mile for going only.

For travel, in going only, to serve any process, warrant, attachment, or other writ, including writs of *subpœna* in civil or criminal cases, six cents a mile, to be computed from the place where the process is returned to the place of service, or, when more than one person is served therewith, to the place of service which is more remote, adding thereto the extra travel which is necessary to serve it on the others. But where more than two writs of any kind required to be served in behalf of the same party on the same person might be served at the same time, the marshal shall be entitled to compensation for travel on only two of such writs; and to save necessary expense, it shall be the duty of the clerk to insert the names of as many witnesses in a cause in such *subpœna* as convenience in serving the same will permit.

In all cases where mileage is allowed to the marshal he may elect to receive the same or his actual traveling expenses, to be proved on his oath, to the satisfaction of the court.

SEC. 830. to 846. Inclusive. (1)

COMMISSIONERS' FEES.

Commissioners' fees.

SEC. 847. For administering an oath, ten cents.

For taking an acknowledgment, twenty-five cents.

For hearing and deciding on criminal charges, five dollars a day for the time necessarily employed.

For attending to a reference in a litigated matter, in a civil cause at law, in equity, or in admiralty, in pursuance of an order of the court, three dollars a day.

For taking and certifying depositions to file, twenty cents for each folio.

For each copy of the same furnished to a party on request, ten cents for each olio.

For issuing any warrant or writ, and for any other service, the same compensation as is allowed to clerks for like services.

For issuing any warrant under the tenth article of the treaty of August nine, one thousand eight hundred and forty-two, between the United States and the Queen of the United Kingdom of Great Britain and Ireland, against any person charged with any crime or offense set forth in said article, two dollars.

For issuing any warrant under the provisions of the convention for the surrender of criminals, between the United States and the King of the French, concluded at Washington, November nine, one thousand eight hundred and forty-three, two dollars.

For hearing and deciding upon the case of any person charged with any crime or offense, and arrested under the provisions of said treaty, or of said convention, five dollars a day for the time necssarily employed.

For the examination and certificate in cases of applications for discharge of poor convicts imprisoned for non-payment of a fine or fine and costs, five dollars a day for the time necessarily employed.

WITNESS' FEES.

Witness' fees.

SEC. 848. For each day's attendance in court, or before any officer pursuant to law, one dollar and fifty cents, and five cents a mile for going from his place of residence to the place of trial or hearing, and five cents a mile for returning. When a witness is *subpœnaed* in more than one cause between the same parties, at the same court, only one trial fee and one *per diem* compensation shall be allowed for attendance. Both shall be taxed in the cause first disposed of, after which the *per diem* attendance fee alone shall be taxed in the other cases in the order in which they are disposed of. When a witness is detained in prison for want of security for his appearance, he shall be entitled, in addition to his subsistence, to a compensation of one dollar a day.

No officer of the court to have witness' fees.

SEC. 849. No officer of the United States courts, in any State or Territory, or in the District of Columbia, shall be entitled to witness' fees for attending before any court or commissioner where he is officiating.

Expenses of clerks, &c., sent away as witnesses.

SEC. 850. When any clerk or other officer of the United States is sent away from his place of business as a witness for the government, his necessary expenses, stated in items and sworn to, in going, returning, and attendance on the court, shall be audited and paid; but no mileage, or other compensation in addition to his salary, shall in any case be allowed.

SEC. 851. (1)

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(1) These sections refer to officers of the Supreme and circuit courts of the United States, and districts of California, Oregon and Nevada.

(1) Refers to seamen being sent home as witnesses.

JURORS' FEES.

Fees of grand and petit jurors.

SEC. 852. For actual attendance at any court or courts, and for the time necessarily occupied in going to and returning from the same, three dollars a day during such attendance.

For the distance necessarily traveled from their residence in going to and returning from said court by the shortest practicable route, five cents a mile.

PRINTERS' FEES.

Printer's fees.

SEC. 853. For publishing any notice, or order, required by law, or the lawful order of any court, department, bureau, or other person, in any newspaper, except as mentioned in sections thirty-eight hundred and twenty-three, thirty-eight hundred and twenty-four, and thirty-eight hundred and twenty-five, title, "PUBLIC PRINTING, ADVERTISEMENTS, AND PUBLIC DOCUMENTS," forty cents per folio for the first insertion, and twenty cents per folio for each subsequent insertion. The compensation herein provided shall include the furnishing of lawful evidence, under oath, of publication, to be made and furnished by the printer or publisher making such publication.

"Folio" defined.

SEC. 854. The term folio, in this chapter, shall mean one hundred words, counting each figure as a word. When there are over fifty and under one hundred words, they shall be counted as one folio; but a less number than fifty words shall not be counted, except when the whole statute, notice, or order contains less than fifty words.

FEES: HOW PAID AND RECOVERED.

Jurors and witnesses, when paid by marshal.

SEC. 855. In cases where the United States are parties, the marshal shall, on the order of the court, to be entered on its minutes, pay to the jurors and witnesses all fees to which they appear by such order to be entitled, which sum shall be allowed him at the treasury in his accounts.

Fees of district attorney, etc., how paid.

SEC. 856. The fees of district attorneys, clerks, marshals, and commissioners, in cases where the United States are liable to pay the same, shall be paid on settling their accounts at the treasury.

Fees, how recovered.

SEC. 857. The fees and compensations of the officers and persons hereinbefore mentioned, except those which are directed to be paid out of the treasury, shall be recovered in like manner as the fees of the officers of the States respectively, for like services are recovered.

TITLE XXIV.

OF CHARTERS OF INCORPORATED CITIES.

CHAPTER I. Of acts amending city charters.
CHAPTER II. Of Salt Lake City incorporation.
CHAPTER III. Of incorporated cities in Cache county.
CHAPTER IV. Of incorpprated cities in Box Elder county.
CHAPTER V. Of Ogden city incorporation.
CHAPTER VI. Of Kaysville city incorporation.
CHAPTER VII. Of incorporated cities in Utah county.
CHAPTER VIII. Of Fillmore city incorporation.
CHAPTER IX. Of Beaver city incorporation.
CHAPTER X. Of incorporated cities in Iron county.
CHAPTER XI. Of incorporated cities in Washington county.
CHAPTER XII. Of incorporated cities in Sanpete county.
CHAPTER XIII. Of incorporated cities in Tooele county.
CHAPTER XIV. Of Coalville city incorporation.
CHAPTER XV. Of Morgan city incorporation.

CHAPTER I.

OF ACTS AMENDING CITY CHARTERS.

An Act amending the charters of incorporated cities.

[*Approved February* 15, 1872.]

SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That the mayor and aldermen of each incorporated city shall be justices of the peace within the limits of their respective cities, and be commissioned as such by the governor; and shall have jurisdiction in cases arising under the rules, laws and ordinances thereof; also in cases arising under the laws of the Territory; and all fines, penalties and forfeitures collected by them, arising under the ordinances of said city, shall be paid into the treasuries of their respective cities, and all fines, penalties and forfeitures collected by them arising under the laws of the Territory, shall be paid into their respective county treasuries.

SEC. 2. All cases arising under the ordinances of any city, may be commenced by affidavit and warrant issued thereon: *Provided,* any officer having probable cause to believe an offense has been committed, may arrest any supposed offender, before affidavit filed or warrant issued. The affidavit shall be sufficient, if it refer to the ordinance by its title and date.

SEC. 3. The city council of any city shall have power to provide by ordinance for imprisonment and forfeiture in cases of violation of city ordinance: *Provided*, that justices of the peace, within and for the respective cities, shall have exclusive jurisdiction in all cases of fines for crimes or misdemeanors, arising under the ordinances of the city, where the fine does not exceed one hundred dollars, or imprisonment not exceeding six months, or both fine and imprisonment.

SEC. 4. (1)

SEC. 5. The city councils of the respective cities, for the purpose of protecting property against loss by fire, may by ordinance, define the limits of fire districts, and prohibit the erection of wooden buildings therein.

SEC. 6. To license, tax and regulate lawyers, surgeons, physicians, dentists and other like professions; and prevent, by penalties, quacks and other pretenders.

SEC. 7. To license, tax and regulate bankers, agents, expressmen, express companies, telegraphers, photographers, assayers, smelters, crushers, and other like occupations or pursuits.

SEC. 8. The city councils of the respective cities, are hereby empowered by ordinance to prevent, punish or prohibit every kind of fraudulent device and practice, and all games of hazard; and punish the keepers of houses wherein the same is conducted.

SEC. 9. To license, tax, regulate and suppress, billiard tables, pin alleys, or tables and ball alleys; to suppress or restrain bawdy and other disorderly houses, and punish the keepers thereof.

SEC. 10. So much of the city charters of the several cities as conflict with the foregoing sections of this act, are hereby repealed.

SEC. 11. (2)

An Act amending certain charters of incorporated cities.

[*Approved February* 15, 1872.]

SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That the city councils of Ogden, Provo, Logan and Corinne cities respectively, shall have power and are hereby authorized:

First—To license, tax and regulate livery stables.

Second—To license, tax and suppress hackmen, draymen, carters, porters, omnibus drivers, cabmen, packers, carmen and all others who may pursue like occupations, with or without vehicles, and prescribe their compensation.

Third—To establish, erect and control hospitals, infirmaries and medical colleges; to purchase grounds for their erection and improve and adorn the same.

Fourth—To purchase and improve suitable grounds for a house of correction; to erect a jail and other buildings thereon, and adopt such rules and regulations for the government and punishment of offenders therein, as said respective city councils may from time to time deem expedient.

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(1) Repealed Feb. 20, 1874.

(2) Amended the charter of Salt Lake City, and is inserted therein.

Fifth—To direct and control the locations of railroad tracks and depot grounds within the city, and regulate or prohibit the use of locomotive engines thereon, and may require the cars to be used within the inhabited portions thereof, to be drawn or propelled by other power than that of steam.

Sixth—To regulate and control the locations of gasworks, canals, telegraph poles, and all improvements of a similar nature.

Seventh—To restrain, regulate or prohibit the running at large of cattle, horses, mules, sheep, swine, goats and all kinds of poultry; and to authorize the distraining, impounding or sale of the same, for the penalty and costs incurred thereby; and to impose penalties for any violation of city ordinance in relation thereto.

SEC. 2. The respective city councils of the aforesaid cities shall have power to levy and collect on real estate (or land claims and improvements thereon) in any district or divisions benefitted, within the limits of their respective cities, a sufficient tax to defray the expenses of leveling, paving, macadamizing or planking, and opening and keeping in repair the streets and sidewalks, of constructing sewers and drains, and keeping the same in repair, and of erecting lamps and lighting the streets in such respective districts or divisions:

Provided, the money thus raised shall be exclusively expended for such purpose in the district where such taxes are assessed, and by such person or persons as the city council may appoint. The amount to be assessed for any such improvement shall be determined by the respective city councils, who shall appoint three commissioners, reputable citizens, to make such assessment, who shall be sworn to faithfully and impartially execute their duties.

Before entering on their duties, the commissioners shall give six days' notice of the time and place of meeting, to all persons interested. The commissioners shall assess the amount, directed by their respective city councils, on the real estate (or land claims and improvements), by them deemed benefitted by any such improvement in proportion to the benefit resulting thereto.

When the commissioners of their respective cities shall have completed this assessment and made a correct copy thereof, they shall deliver the same to the city recorder within thirty days after their appointment, signed by all the commissioners. The city recorder shall cause a notice to be published to all persons interested, of the completion of the assessment, and the time and place shall be designated therein, when the city council shall hear appeals and objections and correct or confirm said assessment.

When the said assessment shall have been completed, the city recorder shall, within ten days thereafter, make a correct tax list, which shall be delivered to the collector or any authorized agent, appointed by the city council, who shall collect said taxes within such time as may be prescribed by said council.

If any assessment is set aside by order of any court, the city council may cause a new one to be made in like manner for the same purpose, for the collection of the amount so assessed.

If the first assessment prove insufficient, another may be made in the same manner, or if too large a sum shall at any time be raised, the excess shall be refunded, ratably, to those by whom it was paid.

CHAPTER II.

SALT LAKE CITY.

An Act incorporating Salt Lake City.

[*Approved January* 20, 1860.]

SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That all that district of country embraced in the following boundaries, to wit:—Beginning at a point one hundred and thirty-six rods north of the Hot Spring, thence west to the west bank of the Jordan river, thence up the west bank thereof to a point directly west from the southwest corner of the five acre lots according to the present survey, thence east along the south line of said lots to the southeast corner thereof, thence east nine hundred rods, thence north to a point directly east of the beginning, thence west to the aforesaid place of beginning, shall be known and designated by the name and style of Salt Lake City; and the inhabitants thereof are hereby constituted a body corporate and politic, by the name and style aforesaid, with perpetual succession; and shall have and use a common seal, which they may change and alter at their pleasure.

Be it enacted by the Governor and Legislative Assembly of the Territory of Utah: That the boundaries of Salt Lake City are hereby extended as follows: Commencing at the northwest corner of Salt Lake City corporation limits, thence west three hundred and twenty rods, thence due south to a point opposite the southern boundary of the corporation line of Salt Lake City, thence east to the river Jordan; and the boundary lines of the city corporation of Salt Lake City are hereby established in accordance with the provisions of this act. (1)

SEC. 11. An act entitled "An act extending the boundaries of Salt Lake City corporation," approved January eighteenth, eighteen hundred and sixty-seven, is hereby amended by inserting after the words river Jordan, thence northerly down the west bank of said river Jordan to a point west of the south line of Tenth South street, thence east along said south line to the east line of the corporate limits; and so much of section one of said act as conflicts with this section is hereby repealed. (1)

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(1) Amendment of Jan. 18, 1867.

SEC. 2. The inhabitants of said city, by the name and style aforesaid, shall have power to sue and be sued, to plead and be impleaded, defend and be defended in all courts of law and equity and in all actions whatsoever; to purchase, receive, hold, sell, lease, convey and dispose of property real and personal for the benefit of said city, both within and without its corporate boundaries; to improve and protect such property, and do all other things in relation thereto as natural persons.

SEC. 3. Said city shall be divided into five municipal wards, whose boundaries shall be as prescribed by the city ordinance.

SEC. 4. The municipal government of said city is hereby vested in a city council, to be composed of a mayor, five aldermen, one from each ward, and nine councilors, who shall have the qualifications of electors in said city, and shall be chosen by the qualified voters thereof, and shall hold their offices for two years, and until their successors are elected and qualified.

SEC. 5. An election shall be held on the second Monday of February next, and every two years thereafter on said day, at which there shall be elected one mayor, five aldermen, nine councilors, one marshal, one treasurer and one recorder; and the persons respectively receiving the highest number of votes cast in the city for said offices shall be declared elected. When two or more candidates for an elective office shall have an equal number of votes for the same office, the election shall be determined by the city council.

SEC. 6. The first election under this act shall be conducted in the following manner, to wit: The county clerk of Salt Lake county shall cause notice of the time and place, and the number and kind of officers to be chosen, to be advertised in some newspaper of said city, or posted up in five public places therein, at least ten days previous to said election. Three judges shall be selected by the probate judge of Salt Lake county, at least one week previous to the day of election; said judges shall choose two clerks; and the judges and clerks, before entering upon their duties, shall take and subscribe an oath or affirmation for the faithful discharge thereof. At the first election so held, the polls shall be opened at eight o'clock a. m., and shall close at six o'clock p. m. At the close of the election the judges shall seal up the ballot box and the list of the names of the electors, and transmit the same, within two days, to the county clerk of Salt Lake county. As soon as the returns are received, the county clerk, in the presence of the probate judge, shall unseal and examine them, and furnish, within five days, to each person having the highest number of votes, a certificate of his election.

SEC. 7. The manner of conducting and voting at all subsequent elections to be held under this act, and contesting the same, the keeping of the poll lists, canvassing the votes, and certifying the returns, and all other things relating thereto, shall be as provided by city ordinance.

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(1) Amendment of Feb. 15, 1872.

SEC. 8. There shall be appointed an assessor and collector, an auditor of public accounts, a supervisor of streets, a surveyor, an attorney, a board of school inspectors, a sealer of weights and measures, a sexton or keeper of burial grounds, a chief of police, inspectors, measurers and weighers, and such other officers and agents as the city council may from time to time direct and appoint.

SEC. 9. Every person elected or appointed to any office under the provisions of this act may be removed from such office by a vote of two-thirds of the city council; and no officer shall be removed except for cause, nor unless furnished with the charges; and shall have an opportunity of being heard in his defense; and the council shall have power to compel the attendance of witnesses and the production of papers when necessary for the purpose of such trial, and shall proceed, within ten days, to hear and determine upon the merits of the case; and if such officer shall neglect to appear and answer to such charges, then the council may declare the office vacant. All officers appointed by the council may be removed at any time by vote, at discretion of two-thirds of said council; and any officer may be suspended until the disposition of charges preferred against him.

SEC. 10. Whenever any vacancy shall happen by the death, resignation or removal of any officer, such vacancy may be filled by the city council; and every person elected or appointed to an elective, judicial or administrative office, shall, before he enters upon the duties thereof, take and subscribe an oath or affirmation that he will support the constitution of the United States, the laws of this Territory, and the ordinances of this city, and that he will well and truly perform all the duties of his office to the best of his knowledge and ability; and file the same, duly certified by the officer before whom it was taken, with the city recorder.

SEC. 11. Any person or persons illegally voting at any election under this act, shall be punishable according to law regulating general elections.

SEC. 12. The mayor shall, before he enters upon the duties of his office, in addition to the usual oath, swear or affirm that he will devote so much of his time to the duties of his office as an efficient and faithful discharge thereof may require; and shall from time to time give the council such information and recommend such measures as he may deem advantageous to the city.

SEC. 13. The mayor and alderman shall be conservators of the peace within the limits of the city, and shall give bonds and qualify as other justices of the peace; and, when so qualified, shall possess the same power and jurisdiction, both in civil and criminal cases arising under the laws of the Territory, and may be commissioned as justices of the peace in and for said city by the governor. They shall account for and pay over to the city treasurer, within three months, all fines and forfeitures received by them in their judicial capacity; and they shall each keep a docket, subject at all times to the inspection of the city council and all other parties interested.

SEC. 14. The mayor and aldermen shall have exclusive jurisdiction in all cases arising under the ordinances of the city, and issue such process as may be necessary to carry such ordinances into execution and effect.

SEC. 15. It shall be the duty of the recorder to make and keep accurate records of all ordinances made by the city council and all their proceedings in a corporate capacity; which record shall at all times be open to the inspection of the electors of the city and all other parties interested. He shall have and keep a plat of all surveys within the city, and record all deeds, transfers or other instruments of writing that may be presented to him for that purpose; and he is hereby authorized to take the acknowledgment of deeds, transfers and other instruments of writing, and shall perform such other duties as may be required of him by city ordinance.

SEC. 16. The marshal shall perform such duties as shall be prescribed by the city council for the preservation of the public peace. All process issued by the mayor or alderman shall be directed to the marshal or his deputy; and in the execution thereof he shall be governed by such rules and regulations as may be provided by city ordinance, and shall be the principal ministerial officer.

SEC. 17. The treasurer shall receive all moneys belonging to the city, and shall keep an accurate account of all receipts and expenditures in such manner as the city council shall direct. He shall pay all moneys that may come to his hand, by virtue of his office, upon orders signed by the auditor of public accounts, and shall report to the city council a true account of his receipts and disbursements, as they may require.

SEC. 18. The city council, a majority of whom shall form a quorum to transact business, shall meet at such times and places as they may direct; and the mayor, when present, shall preside at said meetings and have a casting vote. In the absence of the mayor, any alderman present may be appointed to preside, in such manner as shall be provided by the city council.

SEC. 19. The city council shall hold stated meetings, and the mayor or any two aldermen may call special meetings, by notice to each of the members of said council, served personally or left at their usual place of abode. Said council shall determine the rules of its own proceedings, and be judge of the election and qualification of its own members.

SEC. 20. The city council shall have the management and control of the finances and property, real, personal and mixed, belonging to the corporation.

SEC. 21. The city council is hereby empowered within the jurisdiction of the city, by ordinance and enforcement thereof, to prevent, punish or prohibit every kind of fraudulent device and practice; all descriptions of gaming, playing at dice, cards or other games of chance, with or without betting.

SEC. 22. To license, tax, regulate, suppress or prohibit billiard tables, pin alleys, nine or ten pin alleys, or tables and ball alleys; to suppress or restrain bawdy and other disorderly houses and groceries; to authorize the destruction and demolition of all instruments and devices used for the purpose of gaming; to prevent any riot, noise, disturbance or disorderly assemblage; and to restrain and punish vagrants, mendicants, street beggars and prostitutes.

SEC. 23. To regulate the selling or giving away of any ardent spirits or other intoxicating liquors by any storekeeper, grocer or trader, to be drunk in any shop, store, grocery, outhouse, yard, garden or other place within the city, except by persons or at places duly licensed; to forbid the selling or giving away of ardent spirits or other intoxicating liquors to any child, apprentice or servant, without the consent of his or her parent, guardian, master or mistress, or to any Indian.

SEC. 24. To license, regulate or restrain the manufacturers, sellers or vendors of spirituous and fermented liquors, tavern keepers, dram or tippling shop keepers, grocers and keepers of ordinaries, boarding, victualing or coffee houses, restaurants, saloons or other houses or places for the selling or giving away of wines or other liquors, whether ardent, vinous or fermented.

SEC. 25. To regulate, license, suppress or prohibit all exhibitions of common showmen, shows of every kind, concerts or other musical entertainments, exhibitions of natural or artificial curiosities, caravans, circuses, theatrical performances and all other exhibitions and amusements.

SEC. 26. To prevent or regulate the rolling of hoops, playing at ball, flying of kites or any other amusement or practice having a tendency to annoy persons passing in the streets or on the sidewalks, or to frighten teams or horses.

SEC. 27. To prevent horse racing, immoderate riding or driving in the streets, and to authorize their being stopped by any person; to punish or prohibit the abuse of animals; to compel persons to put up posts in front of their lots to fasten their horses or other animals; to compel the fastening of horses, mules, oxen or other animals attached to vehicles, while standing or remaining in the street.

SEC. 28. To prevent the encumbering of the streets or sidewalks, lanes, alleys, and public grounds with carriages, tents, wagons, carts, sleighs, horses or other animals, sleds, wheelbarrows, boxes, lumber, timber, firewood, posts, awnings, signs, adobies or any material or substance whatever.

SEC. 29. To restrain, regulate or prohibit the running at large of cattle, horses, mules, sheep, swine, goats and all kinds of poultry; and to authorize the distraining, impounding or sale of the same, for the penalty and costs incurred thereby; and to impose penalties for any violation of city ordinance in relation thereto; and to tax, prevent or regulate the keeping of dogs, and to authorize the destruction of the same, when at large, contrary to city ordinance.

SEC. 30. To compel the owner or occupant of any grocery, cellar, tallow chandler shop, soap factory, tannery, stable, barn, privy, sewer or any unwholesome place, to cleanse, remove or abate the same from time to time, as often as may be necessary for the health, comfort and convenience of the inhabitants of said city.

SEC. 31. To direct the location and management of and regulate breweries and tanneries; and to direct the location, management and construction of, and restrain or prohibit within the city, distilleries, slaughtering establishments and establishments for steaming and rendering lard, oil, tallow, offal and such other substances as can or may be rendered; and all establishments or places where nauseous, offensive or unwholesome business may be carried on.

SEC. 32. To direct or prohibit the location and management of houses for the storing of gunpowder, tar, pitch, rosin or other combustible and dangerous materials within the city, and to regulate the keeping and conveying of gunpowder, and the use of candles and lights in barns, stables or outhouses.

SEC. 33. To compel persons to keep the snow and ice from the sidewalks in front of the premises owned or occupied by them on East Temple street, from the Temple block south to the intersection of Second South street.

SEC. 34. To abate or remove nuisances, and punish the authors thereof, by penalties of fine and imprisonment; and to define and declare what are nuisances, and authorize and direct the summary abatement thereof; and to abate all nuisances which are or may be injurious to the public health, peace or good order.

SEC. 35. To prevent any person from bringing, depositing or having within the limits of the city any dead carcass or any other unwholesome substance, and to require the removal or destruction of the same by any person who shall have placed or caused to be placed upon or near his premises or near any of the streams of this city any such substances, or any putrid or unsound beef, pork, or fish, hides or skins of any kind; and, on his default, to authorize the removal or destruction by any officer of said city.

SEC. 36. To exclusively control, regulate, repair, amend and clear the streets, alleys, bridges, sidewalks or crosswalks; and open, widen, straighten or vacate streets and alleys, and put drains or ditches and sewers therein; and prevent the encumbering of the streets in any manner, and protect the same from any encroachment and injury.

SEC. 37. To lay out, improve and regulate the public grounds belonging to the city; to direct and regulate the planting and preserving trees in the streets and public grounds; and to regulate the fencing of lots within the bounds of the city.

SEC. 38. To prevent the ringing of bells, blowing of horns and bugles, crying of goods and all other noises, performances and devices tending to the collection of persons on the streets or sidewalks by auctioneers and others, for the purpose of business, amusement or otherwise.

SEC. 39. To regulate and determine the times and places of bathing and swimming in the river or other waters in and adjoining said city, and to prevent any obscene or indecent exhibition, exposure or conduct.

SEC. 40. To make regulations to prevent the introduction of contagious diseases into the city; to make quarantine laws and enforce the same within the city and around it, not exceeding twelve miles next beyond the bounds thereof.

SEC. 41. To grant and issue licenses, and direct the manner of issuing and registering thereof, and the fees to be paid therefor. Bonds may be taken, on the granting of licenses, for the due observance of the ordinances or regulations of the city council.

SEC. 42. To license, tax and regulate merchants and retailers, auctioneers, distillers, brewers, brokers, pawnbrokers and money changers, and to impose duties upon the sale of goods at auction.

SEC. 43. To license, tax, regulate or suppress hawkers and peddlers.

SEC. 44. To regulate and license or prohibit butchers, and to revoke their licenses for malconduct in the course of trade, and to regulate, license and restrain the sale of fresh meat and vegetables in the city; and restrain and punish the forestalling of poultry, fruit and eggs.

SEC. 45. To establish and regulate markets and other public buildings, and provide for their erection, determine their location, and authorize their erection in the streets, avenues or any other public place or places in the city, and not exceeding four miles beyond the bounds thereof.

SEC. 46. To provide for taking the enumeration of the inhabitants of the city; to regulate the burial of the dead, and registration of births and deaths, to direct the returning and keeping of bills of mortality; and to impose penalties on physicians, sextons and others for any default in the premises.

SEC. 47. To appoint watchmen and policemen, and prescribe their duties and powers.

SEC. 48. To regulate the measuring and inspection of lumber, shingles, timber, posts, staves and heading, and all building materials and all kinds of mechanical work; and appoint one or more inspectors therefor.

SEC. 49. To regulate the weighing and place and manner of selling hay.

SEC. 50. To regulate the inspection of tobacco, also of flour, meal, pork, beef and other provisions, and salt to be sold in barrels, hogsheads and other packages.

SEC. 51. To regulate the measuring of wood and weighing of coal, and the place and manner of selling the same.

SEC. 52. To regulate the inspection of whisky and other liquors to be sold in barrels, hogsheads or other vessels.

SEC. 53. To appoint inspectors, weighers and gaugers, and regulate their duties and prescribe their fees.

SEC. 54. To require every merchant, retailer, trader and dealer in merchandise or property of any description, which is sold by measure or weight, to cause their weights and measures to be sealed by the city sealer and to be subject to his inspection; the standard of which weights and measures shall be conformable to those established by law.

SEC. 55. To establish, make and regulate public pumps, wells, cisterns, hydrants and reservoirs; to distribute, control and so regulate the waters flowing into the city throughout such channels as may be most advantageous, and to prevent the unnecessary waste of water.

SEC. 56. To erect street lamps and regulate the lighting thereof; and from time to time create, alter and extend lamp districts.

SEC. 57. To establish and regulate public pounds.

SEC. 58. To regulate and license ferries.

SEC. 59. To authorize the taking up and providing for the safe keeping and education, for such periods of time as may be expedient, of all children who are destitute of all proper parental care, wandering about the streets, committing mischief and growing up in mendicancy, ignorance, idleness and vice.

SEC. 60. To borrow money on the credit of the city: *Provided,* that the interest on the aggregate of all the sums borrowed and outstanding, shall not exceed one-fourth of the city revenue arising from taxes assessed within the corporation during the preceding year.

SEC. 61. The city council shall have power to make, publish, ordain, amend and repeal all such ordinances, by-laws, or police regulations, not contrary to the Constitution of the United States and the laws of this Territory, for the good government and order of the city, as may be necessary and expedient to carry into effect the powers vested in the city council or any officer of said city by this act; and enforce observance of all rules, ordinances, resolutions, by-laws and police and other regulations, made in pursuance of this act, by penalties not exceeding one hundred dollars for any offense against the same.

SEC. 62. The city council shall have power within the city, by ordinance, to annually levy and collect taxes on the assessed value of all real and personal estate or property in the city; made taxable by the laws of the Territory, for the following named purposes, to wit:—Not to exceed five mills on the dollar to defray the contingent expenses of the city. Not to exceed five mills on the dollar to open, improve and keep in repair the streets of the city. Not to exceed one and a quarter mills on the dollar to control the waters of said city; and they shall annually apportion and apply said taxes as shall in their judgment be deemed most expedient.

SEC. 63. When the city council shall deem it expedient for any especial purpose to borrow money, the interest on which shall not exceed one fourth of the city revenue arising from taxes of the preceding year, the amount of taxes shall not be increased.

SEC. 64. To require, and it is hereby made the duty of every male resident of the city, over the age of twenty-one and under the age of fifty years, to labor one day in each year upon the streets; but every person may at his option pay one dollar and fifty cents for the day he shall be so bound to labor: *Provided*, it be paid within five days from the time he shall be notified by the street supervisor. In default of payment as aforesaid, the same may be collected as other taxes.

SEC. 65. The city council shall have power by ordinance to regulate the form of assessment rolls, and prescribe the duties and define the powers of assessors and collectors. The annual assessment rolls shall be returned by the assessor on or before the first Monday of April in each year; but the time may be extended or additions made thereto by order of the city council. On the return thereof the city council shall fix a day for hearing objections thereto, and any person feeling aggrieved by the assessment of his property may appear at the time specified and make his objections, which shall be heard and determined upon by the city council; and they shall have power to alter, add to, take from and otherwise correct and revise said assessment roll.

SEC. 66. The collector shall be furnished, within thirty days after the assessment rolls are corrected, with a list of the taxes to be collected; and if not paid, the collector shall have power to collect said taxes with interest and cost by suit in the corporate name, or by distress and sale of any property belonging to persons so indebted. The assessor's roll shall in all cases be evidence on the part of the corporation.

SEC. 67. All taxes and assessments, general and special, shall be collected by the collector or collectors in the same manner and with the same power and authority as are given by the law to collectors of county and Territorial taxes: *Provided*, the council shall have power to prescribe by city ordinance the powers, duties and liabilities of assessors and collectors.

SEC. 68. The city council shall have power to make, ordain and establish all such general regulations for the prevention and extinguishment of fires, fixing of chimneys, flues and stove pipes, as they may deem expedient; to procure fire engines and other apparatus used for the extinguishment of the same, and have the charge and control of and provide, fit up and secure engine houses and other places for the keeping and preserving the same; to organize fire, hose and ladder companies, appoint foremen therefor and prescribe their duties, and make rules and regulations for their government, and to impose reasonable fines and forfeitures for a violation of the same.

SEC. 69. The city council shall have power to provide for the election of trustees; to appoint a board of school inspectors and to prescribe the powers and duties of the same, and to enact such ordinances as may be necessary to carry their duties and powers into effect. (1)

SEC. 70. The city council shall have exclusive authority and power to establish and regulate the police of the city; to impose fines, forfeitures and penalties for the breach of any ordinance; to provide for the recovery of such fines and forfeitures and the enforcement of such penalties, and to pass, make, ordain, establish and execute all such ordinances, not repugnant to the Constitution of the United States or the laws of this Territory, as they may deem necessary for carrying into effect and execution the powers specified in this act, and for the peace, good order, regulation, convenience and cleanliness of the city, for the protection of property therein from destruction by fire or otherwise, and for the health, safety and happiness of the inhabitants thereof.

SEC. 71. All ordinances passed by the city council shall, within one month after they shall have been passed, be published in some newspaper printed in said city, or certified copies thereof be posted up in three of the most public places in the city.

SEC. 72. All ordinances of the city may be proven by the seal of the corporation, and, when printed or published in book form, purporting to be printed or published by the authority of the city council, the same shall be received in evidence in all courts or places without further proof.

SEC. 73. The city council shall have power, from time to time, to require further and other duties of all officers whose duties are herein provided; and prescribe the duties and powers of all officers appointed or elected under this act, whose duties herein are not specifically mentioned, and arrange the fees and fix the compensation of all officers, jurors, witnesses and others. They may also require bonds to be given to Salt Lake City by all officers, for the faithful performance of their duties.

SEC. 74. All persons appointed under this act to the office of recorder, marshal, attorney, treasurer, collector, assessor, auditor of public accounts, surveyor or street commissioner, shall be commissioned by warrant under the corporate seal, signed by the mayor or presiding officer of the city council and recorder.

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(1) See sec. (589.) compiled laws.

SEC. 75. If any person, having been an officer in Salt Lake City, shall not, within ten days after notification and request, deliver to his successor in office all the property, papers and effects of every description in his possession belonging to said city or appertaining to the office he held, he shall forfeit and pay for the use of the city not exceeding one hundred dollars, besides all damages caused by his neglect or refusal so to deliver. (1)

SEC. 76. When it shall be necessary to take private property for opening, widening or altering any public street, lane, avenue or alley, the corporation shall make a just compensation therefor to the person whose property is so taken; and if the amount of such compensation cannot be agreed upon, the mayor shall cause the same to be ascertained by a jury of six disinterested men, who shall be inhabitants of the city.

SEC. 77. All jurors impaneled to enquire into the amounts of benefit or damages that shall happen to the owners of property so proposed to be taken, shall first be sworn to that effect, and shall return to the mayor or presiding officer of the city council their inquest in writing, signed by each juror.

SEC. 78. The cemetery lots which have or may hereafter be laid out and sold by said city for private places of burial shall, with their appurtenances, forever be exempt from execution or attachment.

SEC. 79. All ordinances, resolutions and regulations now in force in Salt Lake City, and not inconsistent with this act, shall remain in force until altered, modified or repealed by the city council after this act shall take effect.

SEC. 80. All actions, rights, fines, penalties and forfeitures, in suit or otherwise, which have accrued under the ordinance incorporating Salt Lake City, shall be vested in and prosecuted by the corporation hereby created.

SEC. 81. All plots and surveys of lands, lots or other places within said city, heretofore surveyed by the surveyor, and all plots and surveys of lands, lots or other places that may be hereafter surveyed, and all certificates of surveys given by him shall be deemed valid by this act.

SEC. 82. All property, real, personal or mixed, now belonging to Salt Lake City, is hereby vested in the corporation created by this act; and the officers of said corporation now in office shall respectively continue in the same, until superseded in conformity to the provisions hereof, but shall be governed by this act, which shall be in force from and after its passage.

SEC. 83. This act shall be deemed a public act, and may be read in evidence without proof, and judicial notice shall be taken thereof in all courts and places.

SEC. 84. This act shall not invalidate any act done by the present city council of Salt Lake City, or by its officers, nor divest their successors under this act of any rights, property or otherwise, or liability which may have accrued to or been created by said council prior to the passage of this act.

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(1) See sec. (1868.)

SEC. 85. All officers of the city, created conservators of the peace by this act, shall have power to arrest or cause to be arrested, with or without process, all persons who shall break the peace; commit for examination, and, if necessary, detain such persons in custody forty-eight hours in the city prison or other safe place; and shall have and exercise such other powers, as conservators of the peace, as the city council may prescribe.

SEC. 86. Nothing in this act shall be so construed as to deprive the present city council of Salt Lake City of any power or authority conferred upon them by the ordinance incorporating said city, and the act amendatory thereto; but said city council shall possess, exercise and enjoy all the powers and authority heretofore conferred upon them, except so far as such powers and authority have been expressly modified or repealed by this act, until said city council are superseded by the election and qualification of their successors under this act.

SEC. 87. That "An ordinance to incorporate Salt Lake City," approved Jan. 19, 1851, be and is hereby repealed; and "An act in relation to the assessment, collection and expenditure of a tax for road and other purposes within incorporated cities," approved June 4, 1853, so far as the same applies to Salt Lake City, be and is hereby repealed.

SEC. 88. The city council shall publish, in at least one newspaper published in Salt Lake City, a quarterly statement of the amount of city revenue, specifying in said statement from whence derived and for what disbursed.

An Act amending the charter of Salt Lake City.

[*Approved January* 14, 1865.]

SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:*

First—That the city council of Salt Lake City shall have power and authority to license, tax and regulate livery stables.

Second—To license, tax and suppress hackmen, draymen, carters, porters, omnibus drivers, cabmen, packers, carmen and all others who may pursue like occupations, with or without vehicles, and prescribe their compensation.

Third—To establish, erect and control hospitals, infirmaries and medical colleges; to purchase grounds for their erection and improve and adorn the same; and license, control and regulate physicians and surgeons.

Fourth—To purchase and improve suitable grounds for a house of correction; to erect buildings thereon and adopt such rules and regulations for the government and punishment of offenders therein, as said council may from time to time deem expedient.

Fifth—To direct and control the location of railroad tracks and depot grounds within the city and regulate or prohibit the use of locomotive engines thereon, and may require the cars to be used within the inhabited portions thereof to be drawn or propelled by other power than that of steam.

Sixth—To regulate and control the location of gas works, canals, telegraph poles and all improvements of similar nature.

SEC. 2. The city council shall have power to levy and collect on real estate (or land claims and improvements thereon) in any district or division benefitted, within the limits of said city, a sufficient tax to defray the expense of leveling, paving, macadamizing or planking and opening and keeping in repair the streets and sidewalks, of constructing sewers and drains and keeping the same in repair, and of erecting lamps and lighting the streets in such respective districts or divisions: *Provided*, the money thus raised shall be exclusively expended for such purpose in the district where such taxes are assessed, and by such person or persons as the city council may appoint. The amount to be assessed for any such improvement shall be determined by the city council, who shall appoint three commissioners, reputable citizens, to make such assessment, who shall be sworn to faithfully and impartially execute their duties.

Before entering on their duties the commissioners shall give six days' notice of the time and place of meeting, to all persons interested. The commissioners shall assess the amount directed by the city council on the real estate (or land claims and improvements) by them deemed benefitted by any such improvement, in proportion to the benefit resulting thereto.

When the commissioners shall have completed their assessment and made a correct copy thereof, they shall deliver the same to the city recorder within thirty days after their appointment, signed by all the commissioners.

The city recorder shall cause a notice to be published to all persons interested, of the completion of the assessment, and the time and place shall be designated therein when the city council shall hear appeals and objections and correct or confirm said assessment.

When the said assessment shall have been completed, the city recorder shall, within ten days thereafter, make a correct tax list, which shall be delivered to the collector or any authorized agent appointed by the city council, who shall collect said taxes within such time as may be prescribed by said council.

If any assessment is set aside by order of any court, the city council may cause a new one to be made in like manner for the same purpose, for the collection of the amount so assessed.

If the first assessment prove insufficient, another may be made in the same manner, or, if too large a sum shall at any time be raised, the excess shall be refunded, ratably, to those by whom it was paid.

CHAPTER III.

OF INCORPORATED CITIES IN CACHE COUNTY.

I. Logan.
II. Smithfield.
III. Richmond.
IV. Mendon.
V. Wellsville.
VI. Hyrum.

I. LOGAN.

An Act to incorporate Logan city.

[*Approved January* 17, 1866.]

SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That all that district of country embraced in the following boundaries in Cache county, to wit:, commencing at the south bank of Logan river, at the mouth of Logan Cañon, thence in a northerly direction along the base of the mountains three miles; thence west to the west bank of Little Bear river; thence south along said bank to the mouth of Logan river; thence in an easterly direction along the bank of said river to the place of beginning; shall be known and designated under the name and style of Logan city; and the inhabitants thereof are hereby constituted a body corporate and politic, by the name aforesaid; and shall have perpetual succession, and may have and use a common seal, which they may change and alter at pleasure.

SEC. 1. That the boundary lines of Logan city in Cache county be, and are hereby changed as follows, to wit: Commencing at a point on said boundary line where the Logan and Hyde Park canal crosses said line, thence southerly along said canal to a point where the Hyde Park ditch is taken out of said canal, thence west on the line of said ditch to the south-east corner of the north half of the south-west quarter of section fourteen, township twelve north, range one west; thence west one-half mile, thence north one-fourth mile, thence west to the west bank of Little Bear river, the present western boundary line of said corporation. That so much of section one of an act entitled "An act to incorporate Logan city," approved January seventeenth, eighteen hundred and sixty-six, pertaining to boundaries, as conflicts with this act, is hereby repealed. (1)

SEC. 2. The inhabitants of said city, by the name and style aforesaid, shall have power to sue and be sued, to plead and be impleaded, defend and be defended in all courts of law and equity: and in all actions whatsoever; to purchase, receive, hold, sell, lease, convey and dispose of property real and personal for the benefit of said city, both within and without its corporate boundaries; to improve and protect such property, and to do all other things in relation thereto as natural persons.

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(1) Amendment of Feb. 18 1874.

SEC. 3. The municipal government of said city is hereby vested in a city council, to be composed of a mayor, three aldermen, one from each ward, and five councilors, who shall have the qualifications of electors in said city, and shall be chosen by the qualified voters thereof, and shall hold their office for two years, and until their successors are elected and qualified.

SEC. 4. An election shall be held on the first Monday of March next, and every two years thereafter, on said day, at which there shall be elected, one mayor, three aldermen and five councilors and two justices of the peace; and the persons respectively receiving the highest number of votes cast in the city, for said offices, shall be declared elected. When two or more candidates shall have an equal number of votes for the same office, the election shall be determined by the city council.

SEC. 5. The first election under this act shall be conducted in the following manner, to wit: The county clerk of Cache county shall cause notice of the time and place, and the number and kind of officers to be chosen, to be posted up in four public places in said city, at least ten days previous to said election. Two judges shall be selected by the probate judge of Cache county, at least one week previous to the day of election. Said judges shall choose two clerks, and the judges and clerks, before entering upon their duties, shall take and subscribe an oath or affirmation before the county court for the faithful performance of said duties. The poll shall be open at eight o'clock a.m., and shall close at six o'clock p.m. At the close of the election the judges shall seal up the ballot box and the list of names of the electors and transmit the same, within two days from the time of holding such election, to the county clerk of Cache county. As soon as the returns are received, the county clerk, in the presence of the probate judge, shall unseal and examine them, and furnish within five days, to each person having the highest number of votes, a certificate of his election. In case of a tie, it shall be decided by lot drawn by the county clerk in presence of the probate judge.

SEC. 6. All subsequent elections held under this act shall be held, conducted, and returns thereof made as may be provided for by ordinance of the city council.

SEC. 7. The city council shall be judge of the qualifications, elections and returns of their own members; and a majority of them shall form a quorum to do business, shall determine the rules of their own proceedings, and shall meet at such time and place as they may direct; the mayor shall preside when present, and have a casting vote; and in the absence of the mayor, any alderman present may be appointed to preside over said meeting.

SEC. 8. The city council may hold stated meetings, and special meetings may be called by the mayor, or any two aldermen by notice to each of the members of said council, served personally or left at their usual place of abode.

SEC. 9. The city council shall have power to appoint a marshal, recorder (who shall be the auditor of public accounts), treasurer, assessor and collector, supervisor of streets, surveyor, an attorney, a sexton, a sealer of weights and measures, and all such other officers as may be necessary; define their duties, remove them from office at pleasure, and fix and establish the fees of all city officers.

SEC. 10. All officers elected in accordance with the fourth section of this act may be removed for cause from such office by a vote of two-thirds of the city council, and shall be furnished with the charges, and have an opportunity to be heard in their defense, and the council shall have power to compel the attendance of witnesses, and the production of papers when necessary.

SEC. 11. When any vacancy shall happen by the death, resignation or removal of any officer, such vacancy may be filled by the city council, and every person elected or appointed to any office under this act shall, before he enters upon the duties thereof, take and subscribe an oath or affirmation that he will support the constitution of the United States, the laws of this Territory, and the ordinances of the city, and that he will well and truly perform all the duties of his office to the best of his knowledge and ability; and he shall be required to give bonds as shall be prescribed by the city ordinances, which oath and bond shall be filed with the city recorder.

SEC. 12. The city council shall have power to divide the city into wards, and specify the boundaries thereof, and when necessary create additional wards, and add to the number of aldermen and councilors, and proportion them among the several wards as may be just and most conducive to the welfare of said city.

SEC. 13. The justices of the peace shall be conservators of the peace within the limits of the city, and shall give bonds and qualify as other justices of the peace, and when so qualified shall possess the same powers and jurisdiction, both in civil and criminal cases arising under the laws of the Territory, and may be commissioned as justices of the peace in and for said city, by the governor. They shall account for and pay over all fines and forfeitures arising under the ordinances of the city into the city treasury, and all fines and forfeitures arising under the laws of the Territory into the county treasury, and shall issue such process as may be necessary to carry into effect all ordinances of said city. Appeals may be had from any decision or judgment of a justice's court in the same manner as are or may be provided by statute for appeals from justices' courts, and they shall account for, and pay over to the city treasurer within three months all fines and forfeitures received by them, by virtue of their office, and they shall keep a docket, subject at all times to the inspection of the city council and all other parties interested.

SEC. 14. All process issued by the justices of the peace shall be directed to the marshal, or other legal officer, and in execution thereof, he shall be governed by such rules and regulations as may be provided by city ordinance.

SEC. 15. It shall be the duty of the recorder to make and keep accurate records of all ordinances made by the city council, and all their proceedings in a corporate capacity, which record shall at all times be open to the inspection of the electors of the city, and all other parties interested, and audit all accounts of said incorporation. He shall have and keep a plat of all surveys within the city, and he is hereby authorized to take the acknowledgments of deeds, transfers and other instruments of writing, and shall perform such other duties as may be required of him by city ordinance.

SEC. 16. The treasurer shall receive all money or funds belonging to the city, and shall keep an accurate account of all receipts and expenditures in such manner as the city council shall direct. He shall pay all funds that may come to his hand, by virtue of his office, upon orders signed by the auditor of public accounts; and shall report to the city council a true account of his receipts and disbursements, as they may require.

SEC. 17. The city council shall have power, within the city, by ordinance to annually levy and collect taxes on the assessed value of all property in the city made taxable by the laws of the Territory, for the following named purposes, to wit: not to exceed five mills on the dollar for contingent expenses, nor to exceed five mills on the dollar to open, improve and keep in repair the streets of the city. The city council is further empowered to divide the city into school districts, provide for the election of trustees, appoint a board of school inspectors, annually assess and collect and expend the necessary tax for school purposes and for furnishing the city with water for irrigating and other purposes, and regulate and control the same; and furthermore, so far as may be necessary, control the water courses leading thereto.

SEC. 18. The city council shall have the management and control of the finances and property of said city.

SEC. 19. To require and it is hereby made the duty of every able-bodied male resident of the city, over the age of eighteen and under the age of fifty years, to labor not to exceed two days in each year upon the streets; but every person may, at his option, pay two dollars for the day he shall be so bound to labor: *Provided*, it be paid within five days from the time he shall be notified by the street supervisor. In default of payment as aforesaid, the same may be collected as other taxes.

SEC. 20. The council shall have power to borrow money for city purposes, the interest of which shall not exceed one-fourth of the city revenue arising from taxes of the previous year.

SEC. 21. The city council shall have power by ordinance to regulate the form of the assessment rolls. The annual assessment roll shall be returned by the assessor on or before the first Monday of June in each year, but the time may be extended or additions made thereto by order of the city council. On the return thereof, the city council shall fix a day for hearing objections thereto; and any person feeling aggrieved by the assessment of his property may appear at the time specified and make his objections, which shall be heard and determined upon by the city council, and they shall have power to alter, add to, take from and otherwise correct and revise said assessment roll.

SEC. 22. The collector shall be furnished, within thirty days after the assessment rolls are corrected, with a list of taxes to be collected; and if not paid when demanded, the collector shall have power to collect said taxes with interest and cost by suit in the corporate name, as may be provided by ordinance. The assessment roll shall in all cases be evidence on the part of the corporation.

SEC. 23. To appropriate and provide for the payment of the expenses and debts of the city.

SEC. 24. To make regulations to prevent the introduction of contagious diseases into the city; to make quarantine laws, and enforce the same within the city and around it, not exceeding ten miles next beyond the boundaries thereof.

SEC. 25. To examine, license and regulate the practice of surgeons and physicians; to prohibit, prevent and punish, by fine and imprisonment, the imposition of quacks and other medical pretenders; to establish hospitals and infirmaries, and make regulations for the government of the same; to make regulations to secure the general health of the inhabitants; to declare what shall be nuisances, and prevent and remove the same.

SEC. 26. To provide the city with water; to dig wells, lay pump logs and pipes, and erect pumps in the streets for the extinguishment of fires, and the convenience of the inhabitants.

SEC. 27. To direct or prohibit the location and management of houses for the storing of gunpowder, tar, pitch, resin or other combustible and dangerous materials within the city, and to regulate the conveying of gunpowder.

SEC. 28. To exclusively control, regulate, repair, amend and clear the streets, alleys, bridges, sidewalks or crosswalks, and open, widen, straighten or vacate streets and alleys and put drains or ditches and sewers therein, and prevent the incumbering of the streets in any manner and protect the same from any encroachment and injury.

SEC. 29. To provide for the lighting of the streets and erecting lamp posts; to erect market houses and establish markets and market places, and provide for the government and regulation thereof.

SEC. 30. To provide for the erection of all needful buildings for the use of the city, and for enclosing, improving and regulating all public grounds belonging to the city.

SEC. 31. To license, regulate, prohibit or restrain the manufacturers, sellers or vendors of spirituous or fermented liquors, tavern keepers, dram or tippling shop keepers, boarding, victualing or coffee houses, restaurants, saloons or other houses or places for the selline or giving away of wines or other liquors, whether ardent, vinous, or fermented.

SEC. 32. To license, tax, and regulate auctioneers, merchants, retailers, groceries, ordinaries, hawkers, peddlers, brokers, pawnbrokers, and money changers.

SEC. 33. To regulate the selling or giving away of any ardent spirits or other intoxicating liquors by any shopkeeper, grocer or trader, to be drank in any shop, store, grocery, outhouse, yard, garden, or other place within the city, except by persons or at places duly licensed; to forbid the selling or giving away of ardent spirits or other intoxicating liquors to any child, apprentice or servant, without the consent of his or her parent, guardian, master or mistress, or to any Indian.

SEC. 34. To regulate and license or prohibit butchers, and to revoke their license for malconduct in the course of trade; and to regulate, license and restrain the sale of fresh meat and vegetables in the city.

SEC. 35. To license, tax, regulate, suppress or prohibit billiard tables, pin alleys, nine or ten pin alleys or table and ball alleys; to suppress or restrain all disorderly houses and groceries; to authorize the destruction and demolition of all instruments and devices used for the purpose of gaming, and all kinds of gambling; to prevent any riot, noise, disturbance or disorderly assemblages; and to restrain and punish vagrants, mendicants, street beggars and prostitutes.

SEC. 36. To regulate, license, suppress or prohibit all exhibitions of common showmen, shows of every kind, concerts or other musical entertainments, exhibitions of natural or artificial curiosities, caravans, circuses, theatrical performances, ball rooms and all other exhibitions and amusements.

SEC. 37. To license, tax and regulate hacking, carriages, wagons, carts and drays and fix the rates to be charged for the carriage of persons and for wagonage, cartage and drayage of property; as also to license and regulate porters and fix the rates of porterage.

SEC. 38. To provide for the prevention and extinguishment of fires; to regulate the fixing of chimneys and flues thereof and stove pipes, and to organize and establish fire companies.

SEC. 39. To regulate and order parapet walls and other partition fences.

SEC. 40. To establish standard weights and measures and regulate the weights and measures to be used in the city, in all cases not provided for by law.

SEC. 41. To provide for the inspecting and measuring of lumber and other building materials, and for the measurement of all kinds of mechanical work.

SEC. 42. To provide for the inspection and weighing of hay, lime and stone coal, and the measuring of charcoal, firewood and other fuel to be sold or used within the city.

SEC. 43. To provide for and regulate the inspection of tobacco, beef, pork, flour and meal; also beer, whisky and brandy and all other spirituous or fermented liquors.

SEC. 44. To regulate the weight and quality of bread sold and used in the city.

SEC. 45. The city council shall have exclusive power within the city, by ordinance, to license, regulate or restrain the keeping of ferries and toll bridges.

SEC. 46. To provide for taking the enumeration of the inhabitants of the city; to regulate the burial of the dead, and registration of births and deaths; to direct the returning and keeping of bills of mortality and to impose penalties on physicians, sextons, and others for any default in the premises.

SEC. 47. To prevent horse racing, immoderate riding or driving in the streets, and to authorize their being stopped by any person; to punish or prohibit the abuse of animals, to provide for the putting up of posts in front of city lots to fasten horses and other animals; to compel the fastening of horses, mules, oxen or other animals attached to vehicles, whilst standing or remaining in the streets.

SEC. 48. To prevent the incumbering of the streets or sidewalks, lanes, alleys and public grounds with carriages, tents, wagons, carts, sleighs, horses or other animals, sleds, wheelbarrows, boxes, lumber, timber, firewood, posts, awnings, signs, adobies or any material or substance whatever.

SEC. 49. To restrain, regulate or prohibit the running at large of cattle, horses, mules, sheep, swine, goats and all kinds of poultry; and to tax, prevent or regulate the keeping of dogs, and to authorize the destruction of the same, when at large contrary to city ordinance.

SEC. 50. To compel the owner or occupant of any grocery, cellar, tallow chandler shop, soap factory, tannery, stable, barn, privy, sewer or any unwholesome place to cleanse, remove or abate the same from time to time, as oft as may be necessary for the health, comfort and convenience of the inhabitants of said city.

SEC. 51. To direct the location and management of, and regulate breweries and tanneries; and to direct the location, management and construction of and restrain or prohibit within the city distilleries, slaughtering establishments and all establishments or places where nauseous, offensive or unwholesome business may be carried on.

SEC. 52. To prevent any person from bringing, depositing or having within the limits of the city any dead carcass or any unwholesome substance, and to require the removal or destruction of the same by any person who shall have placed or caused to be placed upon or near his premises or near any of the streams of this city any such substance or any putrid or unsound beef, pork or fish, hides or skins of any kind; and, on his default, to authorize the removal or destruction of the same by any officer of said city.

SEC. 53. To direct and regulate the planting and preserving trees in the streets and public grounds, and regulate the fencing of lots within the boundaries of the city.

SEC. 54. To prevent the ringing of bells, the blowing of horns and bugles, the crying of goods and all other noises, performances and devices tending to disturb the peace and quiet of the city.

SEC. 55. To grant and issue licenses and direct the manner of issuing and registering thereof. Bonds may be taken on the granting of licenses, for the due observance of the ordinances of the city council.

SEC. 56. To require every merchant, retailer, trader and dealer in merchandise or property of every description, which is sold by measure or weight, to cause their weights and measures to be sealed by the city sealer and to be subject to his inspection, the standard of which weights and measures shall be conformable to those established by law.

SEC. 57. The city council shall have power to make such ordinances and resolutions, not contrary to the Constitution and laws of the United States and the laws of the Territory, as may be necessary and expedient to carry into effect the powers vested in the city council or any officer of said city by this act, and enforce observance of all ordinances and resolutions made in pursuance of this act by penalties not exceeding one hundred dollars or imprisonment not to exceed six months, or both.

SEC. 58. The city council shall have exclusive authority and power to establish and regulate the police of the city; to impose fines, forfeitures and penalties for the breach of any ordinances; to provide for the recovery of such fines and forfeitures and the enforcement of such penalties, and to pass, make, ordain, establish and execute all such ordinances, not repugnant to the Constitution and laws of the United States or the laws of this Territory, as they may deem necessary for carrying into effect and execution the powers specified in this act, and for the peace, good order, regulation, convenience and cleanliness of the city, for the protection of property therein from destruction by fire or otherwise, and for the health, safety and happiness of the inhabitants thereof.

Sec. 59. To provide for the punishment of offenders and vagrants by imprisonment in the county or city jail, or by compelling them to labor on the streets or other public works until the same shall be fully paid in all cases where such offenders or vagrants shall fail or refuse to pay the fines and forfeitures which may be awarded against them.

Sec. 60. All ordinances passed by the city council shall, within one months after they shall have been passed, be published in some newspaper printed in said city, or certified copies thereof be posted up in three of the most public places in the city.

Sec. 61. All ordinances of the city may be proven by the seal of the corporation, and, when printed or published in book form, purporting to be printed or published by authority of the city council, the same shall be received in evidence in all courts or places without further proof.

Sec. 62. When it shall be necessary to take private property for opening, widening or altering any public street, lane, avenue or alley, the corporation shall make a just compensation therefor to the person whose property is so taken; and if the amount of such compensation cannot be agreed upon, a justice of the peace shall cause the same to be ascertained by a jury of six disinterested men, who shall be inhabitants of the city.

Sec. 63. All jurors impaneled to enquire into the amount of benefit or damage that shall happen to the owners of property so proposed to be taken shall first be sworn to that effect, and shall return to the mayor or presiding officer of the city council, their inquest in writing, signed by each juror.

Sec. 64. All officers of the city, created conservators of the peace by this act, shall have power to arrest or cause to be arrested, with or without process, all persons who shall break the peace; commit for examination, and, if necessary, detain such persons in custody forty-eight hours in the city prison or other safe place; and shall have and exercise such other powers, as conservators of the peace, as the city council may prescribe.

Sec. 65. The city council shall cause to be published in some newspaper published in Logan city or posted up in three public places, on or before the first day of December in each year, a statement of the amount of the city revenue, specifying in said statement whence derived and for what disbursed.

II. SMITHFIELD.

An Act incorporating the city of Smithfield, in Cache county.

[*Approved February* 6, 1868.]

SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That all that district of country embraced in the following boundaries, to wit: Commencing at the south-east corner of Tarbet and Co.'s grist mill, thence south two miles, thence west four miles, thence north four miles, thence east four miles, thence south two miles to the place of beginning, shall be known and designated under the name and style of Smithfield city; and the inhabitants thereof are hereby constituted a body corporate and politic by the name aforesaid, and shall have perpetual succession, and may have and use a common seal which they may change and alter at pleasure.

SEC. 2. The inhabitants of said city, by the name and style aforesaid, shall have power to sue and be sued, to plead and be impleaded, defend and be defended in all courts of law and equity and in all actions whatsoever; to purchase, receive and hold property real and personal in said city; to purchase, receive and hold real property beyond the city for burying grounds and other public purposes for the use of the inhabitants of said city; to sell, lease, convey or dispose of property, real and personal, for the benefit of said city; to improve and protect such property, and to do all other things in relation thereto as natural persons.

SEC. 3. There shall be a city council to consist of a mayor and five councilors, who shall have the qualifications of electors of said city, and shall be chosen by the qualified voters thereof, and shall hold their offices for two years and until their successors shall be elected and qualified. The city council shall judge of the qualifications, elections and returns of their own members, and a majority of them shall form a quorum to do business; but a smaller number may adjourn from day to day and compel the attendance of absent members, under such penalties as may be prescribed by ordinance; there shall also be elected in like manner two justices of the peace who shall have the qualifications of voters, be commissioned by the governor, and have jurisdiction in all cases arising under the ordinances of the city.

SEC. 4. The mayor and councilors, before entering upon the duties of their offices shall take and subscribe an oath or affirmation that they will support the Constitution of the United States and the laws of this Territory, and that they will well and truly perform the duties of their offices to the best of their skill and abilities.

SEC. 5. One mayor and five councilors shall be elected biennially, and the first election under this act shall be at such time in said city as the probate judge of Cache county shall direct: *Provided*, said election shall be on or before the first Monday in August next. Said election shall be held and conducted as now is provided by law for the holding of elections for county and Territorial officers; and at the said first election all electors within said city limits shall be entitled to vote.

SEC. 6. The clerks of election shall leave with each person elected, or at his usual place of residence, within five days after the election, a written notice of his election; and each person so notified shall, within ten days after the election, take the oath or affirmation hereinbefore mentioned, a certificate of which oath shall be deposited with the recorder, whose appointment is hereinafter provided for, and be by him preserved; and all subsequent elections shall be held, conducted and returns thereof made as may be provided for by ordinance of the city council.

SEC. 7. The city council shall have authority to levy and collect taxes, for city purposes, upon all taxable property real and personal within the limits of the city, not exceeding one half of one per cent. per annum upon the assessed value thereof; and may enforce the payment of the same to be provided for by ordinance, not repugnant to the Constitution of the United States or to the laws of this Territory.

SEC. 8. The city council shall have power to appoint a recorder, treasurer, assessor and collector, marshal and supervisor of streets. They shall also have the power to appoint all such other officers, by ordinance, as may be necessary, define the duties of all city officers and remove them from office at pleasure.

SEC. 9. The city council shall have power to require of all officers, appointed in pursuance of this act, bonds with security for the faithful performance of their respective duties, and also to require of all officers, appointed as aforesaid, to take an oath for the faithful performance of the duties of their respective offices.

SEC. 10. The city council shall have power and authority to make, ordain, establish and execute all such ordinances, not repugnant to the Constitution of the United States or the laws of this Territory, as they may deem necessary for the peace, benefit, good order, regulation, convenience and cleanliness of said city; for the protection of property therein from destruction by fire or otherwise, and for the health and happiness of the inhabitants thereof; and shall have control of the water and water courses leading to the city: *Provided*, that such control shall not be exercised to the injury of any rights already acquired by actual settlers thereon; and shall have control of the water courses and mill privileges within said city; but in no case shall they interfere with the natural rights of others heretofore acquired in relation to water. They shall have power to fill all vacancies that may happen by death, resignation, removal, or otherwise, of any of the officers herein made elective; to fix and establish the fees of the officers of said corporation. The city council shall have power to divide the city into wards and specify the boundaries thereof.

SEC. 11. All ordinances passed by the city council shall, within ten days after they shall have been passed, be published in some newspaper printed in said city, or certified copies thereof be posted up in three of the most public places in the city. They shall not be in force until thus published or posted up.

SEC. 12. All ordinances of the city may be proven by the seal of corporation affixed thereto; and, when printed or published in book or pamphlet form, purporting to be printed or published by the authority of the corporation, the same shall be received in evidence in all courts and places, without further proof.

SEC. 13. The justices of the peace of said city shall have all the powers of other justices of the peace, both in civil and criminal cases arising under the laws of the Territory; they shall perform the same duties, be governed by the same laws, give the same bonds and securities as other justices of the peace; they shall have exclusive jurisdiction in all cases arising under the ordinances of the corporation, and shall issue such process as may be necessary to carry such ordinances into execution. Appeals may be had from any decision or judgment of said justices, arising under the ordinances of said city or the laws of the Territory, in the same manner as appeals are or may be taken from other justices of the peace.

SEC. 14. The mayor shall be the chief executive officer of said corporation; he shall preside in the city council, and shall have power to veto any ordinance when not passed by four-fifths majority; and it shall be his duty to sign all city ordinances.

SEC. 15. The city council shall have power to restrain, regulate or prohibit the running at large of cattle, horses, mules, sheep, swine, goats and all kinds of poultry; and to tax and regulate the keeping of dogs, and to authorize the destruction of the same when at large contrary to city ordinance.

SEC. 16. To license, regulate, prohibit or restrain the manufacturing, selling or giving away of spirituous, vinous or fermented liquors, [to license and regulate] tavern keepers, dram or tippling shop keepers, boarding, victualing or coffee houses, restaurants, saloons or other houses or places for the selling or giving away of ardent, vinous or fermented liquors.

SEC. 17. The city council shall have exclusive power by ordinance to regulate the police of the city; to license, tax and regulate auctioneers, merchants and retailers; to license, tax and regulate theatrical and other exhibitions, shows and amusements; to prohibit and suppress gaming, bawdy and other disorderly houses.

SEC. 18. This act shall be in force on and after the first day of April, 1868, and may be amended or repealed at the pleasure of the Legislative Assembly.

III. RICHMOND.

An Act incorporating Richmond city, in Cache county.

[*Approved February* 6, 1868.]

SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That all that district of country embraced in the following boundaries in Cache county, to wit: Commencing at the section twelve (12), township fourteen (14), north, range one east, running due west on said line to Cub river, thence down the centre of the main channel of said river to the centre line of section six (6), in township thirteen (13) north, range one (1) east, thence east on said line to the centre of section one (1), thence due north to the place of beginning, shall be known and designated under the name of Richmond city; and the inhabitants thereof are hereby constituted a body corporate and politic by the name aforesaid, and shall have perpetual succession, and may have and use a common seal, which they may change and alter at pleasure.

SEC. 2. The inhabitants of said city, by the name and style aforesaid shall have power to sue and be sued, to plead and be impleaded, defend and be defended in all courts of law and equity and in all actions whatsoever; to purchase, receive and hold property, real and personal, in said city; to purchase, receive and hold real property beyond the city for burying grounds or other public purposes, for the use of the inhabitants of said city; to sell, lease, convey or dispose of property, real and personal, for the benefit of said city; to improve and protect such property, and to do all other things in relation thereto as natural persons.

SEC. 3. There shall be a city council, to consist of a mayor and five councilors, who shall have the qualifications of electors of said city, and shall be chosen by the qualified voters thereof, and shall hold their offices for two years and until their successors shall be elected and qualified. The city council shall judge of the qualifications, elections and returns of their own members, and a majority of them shall form a quorum to do business, but a smaller number may adjourn from day to day and compel the attendance of absent members under such penalties as may be prescribed by ordinance; there shall also be elected in like manner two justices of the peace, who shall have the qualifications of voters, be commissioned by the governor, and have jurisdiction in all cases arising under the ordinances of the city.

SEC. 4. The mayor and councilors, before entering upon the duties of their offices, shall take and subscribe an oath or affirmation that they will support the Constitution of the United States and the laws of this Territory, and that they will well and truly perform all the duties of their offices to best of their skill and abilities.

SEC. 5. One mayor and five councilors shall be elected biennially, and the first election under this act shall be at such time in said city as the probate judge of Cache county shall direct: *Provided*, said election shall be on or before the first Monday in August next. Said election shall be held and conducted as now is provided by law for the holding of elections for county and Territorial officers; and at the said first election all electors within said city limits shall be entitled to vote.

SEC. 6. The clerks of election shall leave with each person elected, or at his usual place of residence, within five days after the election, a written notice of his election; and each person so notified shall, within ten days after the election, take the oath or affirmation hereinbefore mentioned, a certificate of which oath shall be deposited with the recorder, whose appointment is hereinafter provided for, and be by him preserved; and all subsequent elections shall be held, conducted and returns thereof made as may be provided for by ordinance of the city council.

SEC. 7. The city council shall have power to levy and collect taxes for city purposes upon all taxable property, real and personal, within the limits of the city, not exceeding one-half of one per cent. per annum upon the assessed value thereof; and may enforce the payment of the same, to be provided for by ordinance not repugnant to the Constitution of the United States, or the laws of this Territory.

SEC. 8. The city council shall have power to appoint a recorder, treasurer, assessor and collector, marshal and supervisor of streets. They shall also have the power to appoint all such other officers, by ordinance, as may be necessary, define the duties of all city officers and remove them from office at pleasure.

SEC. 9. The city council shall have power to require of all officers appointed in pursuance of this act, bonds with security for the faithful performance of their respective duties, and also to require of all officers appointed as aforesaid, to take an oath for the faithful performance of the duties of their respective offices.

SEC. 10. The city council shall have power and authority to make, ordain, establish and execute all such ordinances, not repugnant to the Constitution of the United States or the laws of this Territory, as they may deem necessary for the peace, benefit, good order, regulation, convenience and cleanliness of said city; for the protection of property therein from destruction by fire or otherwise, and for the health and happiness of the inhabitants thereof; and shall have control of the water and water courses leading to the city: *Provided*, that such control shall not be exercised to the injury of any rights already acquired by actual settlers thereon; and shall have control of the water courses and mill privileges within said city; but in no case shall they interfere with the natural rights of others heretofore acquired in relation to water. They shall have power to fill all vacancies, that may happen by death, resignation, removal or otherwise, of any of the officers herein made elective; to fix and establish the fees of the officers of said corporation. The city council shall have power to divide the city into wards, and specify the boundaries thereof.

SEC. 11. All ordinances passed by the city council shall, within ten days after they shall have been passed, be published in some newspaper printed in said city, or certified copies thereof be posted up in three of the most public places in the city. They shall not be in force until thus published or posted up.

SEC. 12. All ordinances of the city may be proven by the seal of the corporation affixed thereto; and, when printed or published in book or pamphlet form, purporting to be printed or published by the authority of the corporation, the same shall be received in evidence in all courts and places, without further proof.

SEC. 13. The justices of the peace of said city shall have all the powers of other justices of the peace, both in civil and criminal cases arising under the laws of the Territory. They shall perform the same duties, be governed by the same laws, and give the same bonds and securities as other justices of the peace. They shall have exclusive jurisdiction in all cases arising under the ordinances of the corporation, and shall issue such process as may be necessary to carry such ordinances into execution. Appeals may be had from any decision or judgment of said justices, arising under the ordinances of said city, or the laws of the Territory, to the probate court of said Cache county, in the same manner as appeals are or may be taken from other justices of the peace.

SEC. 14. The mayor shall be the chief executive officer of said corporation; he shall preside in the city council, and shall have power to veto any ordinance when not passed by four-fifths majority, and it shall be his duty to sign all city ordinances.

SEC. 15. The city council shall have power to restrain, regulate or prohibit the running at large of cattle, horses, mules, sheep, swine, goats and all kinds of poultry; and to tax and regulate the keeping of dogs, and to authorize the destruction of the same when at large contrary to city ordinance.

SEC. 16. To license, regulate, prohibit or restrain the manufacturing, selling or giving away of spirituous, vinous or fermented liquors, [to license and regulate] tavern keepers, dram or tippling shop keepers, boarding, victualing or coffee houses, restaurants, saloons, or other houses or places for the selling or giving away of ardent, vinous, or fermented liquors.

SEC. 17. The city council shall have exclusive power, by ordinance, to regulate the police of the city; to license, tax and regulate auctioneers, merchants and retailers; to license, tax and regulate theatrical and other exhibitions, shows and amusements; to prohibit and suppress gaming, bawdy and other disorderly houses.

SEC. 18. This act shall be in force on and after the first day of April, one thousand eight hundred and sixty-eight, and may be amended or repealed at the pleasure of the Legislative Assembly.

IV. MENDON.

An Act incorporating Mendon city, in Cache county.

[*Approved February* 12, 1870.]

SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That all that district of country in Cache county embraced within the following boundaries, to wit: Beginning at a point one and one-half miles east of the south-east corner of block five in Mendon town plot, thence south one and one-half miles, thence west three miles, thence north three miles, thence east three miles, thence south one and one-half miles to the place of beginning, shall be known and designated under the name of Mendon city, and the inhabitants thereof are hereby constituted a body corporate and politic by the name aforesaid, and shall have succession, and may have and use a common seal which they may change and alter at pleasure.

SEC. 2. The inhabitants of said city, by the name and style aforesaid, shall have power to sue and be sued, to plead and be impleaded, defend and be defended in all courts of law and equity and in all actions whatsoever; to purchase, receive and hold property, real and personal, in said city; to purchase, receive and hold real property beyond the city for burying grounds or other public purposes for the use of the inhabitants of said city; to sell, lease, convey or dispose of property, real and personal, for the benefit of said city; to improve and protect such property, and to do all other things in relation thereto as natural persons.

SEC. 3. There shall be a city council, to consist of a mayor and six councilors, who shall have the qualifications of electors of said city, and shall be chosen by the qualified voters thereof, and shall hold their offices for two years and until their successors shall be elected and qualified. The city council shall judge of the qualifications, elections and returns of their own members, and a majority of them shall form a quorum to do business; but a less number may adjourn from day to day and compel the attendance of absent members under such penalties as may be prescribed by ordinance; there shall also be elected in like manner two justices of the peace, who shall have the qualifications of voters, be commissioned by the governor, and have jurisdiction in all cases arising under the ordinances of the city.

SEC. 4. The mayor and councilors, before entering upon the duties of their offices, shall take and subscribe an oath or affirmation that they will support the Constitution of the United States and the laws of this Territory, and that they will well and truly perform all the duties of their offices to the best of their skill and abilities.

SEC. 5. A mayor and six councilors shall be elected biennially, and the first election under this act shall be at such time in said city as the probate judge of Cache county shall direct: *Provided,* said election shall be on or before the first Monday in August next. Said election shall be held and conducted as now is provided by law for the holding of elections for county and Territorial officers; and at the said first election, all electors within said city limits shall be entitled to vote.

SEC. 6. The clerks of election shall leave with each person elected, or at his usual place of residence, within five days after the election, a written notice of his election, and each person so notified shall, within ten days after the election, take the oath or affirmation hereinbefore mentioned, a certificate of which oath shall be deposited with the recorder, whose appointment is hereinafter provided for, and be by him preserved; and all subsequent elections shall be held, conducted and returns thereof made as may be provided for by ordinance of the city council.

SEC. 7. The city council shall have power to levy and collect taxes for city purposes upon all taxable property, real and personal, within the limits of the city, not exceeding one-half of one per cent. per annum upon the assessed value thereof, and may enforce the payment of the same, to be provided for by ordinance not repugnant to the Constitution of the United States, or the laws of this Territory.

SEC. 8. The city council shall have power to appoint a recorder, treasurer, assessor and collector, marshal and supervisor of streets, and appoint all such other officers by ordinance as may be necessary, define the duties of all city officers and remove them from office at pleasure.

SEC. 9. The city council shall have power to require of all officers appointed in pursuance of this act, bonds with security for the faithful performance of their respective duties; and also to require of all officers appointed as aforesaid, to take an oath for the faithful performance of the duties of their respective offices.

SEC. 10. The city council shall have power and authority to make, ordain, establish and execute all such ordinances, not repugnant to the Constitution of the United States or the laws of this Territory, as they may deem necessary for the peace, benefit, good order, regulation, convenience and cleanliness of said city; for the protection of property therein from destruction by fire or otherwise, and for the health and happiness of the inhabitants thereof; and shall have control of the water and water courses leading to the city: *Provided*, that such control shall not be exercised to the injury of any rights already acquired by actual settlers thereon; and shall have control of the water courses and mill privileges within said city; but in no case shall they interfere with the natural rights of others heretofore acquired in relation to water. They shall have power to fill all vacancies that may happen by death, resignation, removal or otherwise, of any of the officers herein made elective; to fix and establish the fees of the officers of said corporation. The city council shall have power to divide the city into wards and specify the boundaries thereof.

SEC. 11. All ordinances passed by the city council shall, within ten days after they shall have been passed, be published in some newspaper printed in said city, or certified copies thereof be posted up in three of the most public places in the city. They shall not be in force until thus published or posted up.

SEC. 12. All ordinances of the city may be proven by the seal of the corporation affixed thereto; and, when printed or published in book or pamphlet form, purporting to be printed or published by the authority of the corporation, the same shall be received in evidence in all courts and places without further proof.

SEC. 13. The justices of the peace of said city shall have all the powers of other justices of the peace, both in civil and criminal cases, arising under the laws of the Territory. They shall perform the same duties, be governed by the same laws, and give the same bonds and securities as other justices of the peace. They shall have exclusive original jurisdiction in all cases arising under the ordinances of the corporation, and shall issue such process as may be necessary to carry such ordinances into execution. Appeals may be had from any decision or judgment of said justices, arising under the ordinances of said city or the laws of the Territory, in the same manner as appeals are or may be taken from other justices of the peace.

SEC. 14. The mayor shall be the chief executive officer of said corporation, he shall preside in the city council, and shall have power to veto any ordinance, but when passed by two-thirds majority after considering his objections, it shall be his duty to sign the same as well as all other city ordinances.

SEC. 15. The city council shall have power to restrain, regulate or prohibit the running at large of cattle, horses, mules, sheep, swine, goats, and all kinds of poultry; and to tax and regulate the keeping of dogs, and to authorize the destruction of the same when at large contrary to city ordinances.

SEC. 16. To license, regulate, prohibit or restrain the manufacturing, selling or giving away of spirituous, vinous or fermented liquors, to tax and regulate tavern keepers, dram or tippling shop keepers, victualing or coffee houses, restaurants, saloons or other houses or places for the selling or giving away of ardent, vinous or fermented liquors.

SEC. 17. The city council shall have exclusive power, by ordinance, to regulate the police of the city; to license, tax and regulate auctioneers, merchants and retailers; to license, tax and regulate theatrical and other exhibitions, shows, and amusements; to prohibit and suppress gaming, bawdy and other disorderly houses.

SEC. 18. This act shall be in force on and after the first day of April, one thousand eight hundred and seventy, and may be amended at the pleasure of the Legislative Assembly.

V. WELLSVILLE.

An Act to incorporate the city of Wellsville.

[*Approved January* 19, 1866.]

SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That all that district of country embraced in the following boundaries in Cache county, to wit: Commencing at the mouth of Wellsville city cañon, thence in a northerly direction along the base of the mountains to a parallel line running through Clayton's Spring, thence east on said line four miles, thence south four miles, thence in a westerly direction to the place of beginning, shall be known and designated under the name and style of the city of Wellsville, and the inhabitants thereof are hereby constituted a body corporate and politic by the name aforesaid, and shall have perpetual succession, and may have and use a common seal, which they may change and alter at pleasure.

SEC. 2. The inhabitants of said city, by the name and style aforesaid, shall have power to sue and be sued, to plead and be impleaded, defend and be defended in all courts of law and equity and in all actions whatsoever; to purchase, receive, hold, all property for cemeteries, public squares, city buildings, water works, canals, streams of water and for all other purposes for the benefit and use of said city, both within and without its corporate boundaries, to improve and protect such property, and do all other things in relation thereto, as natural persons.

SEC. 3. The municipal government of said city is hereby vested in a city council, to be composed of a mayor, six councilors, who shall have the qualifications of electors in said city, and shall hold their office for two years, and until their successors are elected and qualified.

SEC. 4. An election shall be held on the first Monday of March next, and every two years thereafter on said day, at which there shall be elected one mayor, six councilors, and two justices of the peace for said city; and the persons receiving the highest number of votes cast in the city for said offices shall be declared elected. When two or more candidates shall have an equal number of votes for the same office, the election shall be determined by the city council.

SEC. 5. The first election under this act shall be conducted in the following manner, to wit: The county clerk of Cache county shall cause notice of the time and place, and the number and kind of officers to be elected, to be posted up in four public places in said city, at least ten days previous to said election. Two judges shall be chosen by the probate judge of Cache county, at least one week previous to the day of election; said judges shall choose two clerks; and the judges and clerks, before entering upon their duties, shall take and subscribe an oath or affirmation before the clerk of the county court for the faithful performance of said duties. The polls shall be open at eight a. m., and close at six p. m. At the close of said election the judges shall seal up the ballot box and the list of the names of the electors, and transmit the same, within two days from the time of holding such election to the county clerk of Cache county. As soon as the returns are received, the county clerk, in the presence of the probate judge, shall unseal and examine them, and furnish, within five days, to each person having the highest number of votes, a certificate of his election. In case of a tie, it shall be decided by lot drawn by the county clerk in the presence of the probate judge.

Sec. 6. All subsequent elections held under this act shall be held, conducted and returns thereof made as may be provided for by ordinance of the city council.

Sec. 7. The city council shall be judge of the qualifications, elections and returns of their own members; and the majority of them shall form a quorum to do business, shall determine the rules of their own proceedings and shall meet at such time and place as they may direct; the mayor shall preside when present, and have a casting vote; and, in the absence of the mayor, any councilor present may be appointed to preside over said meeting.

Sec. 8. The city council may hold stated meetings; and special meetings may be called by the mayor or any two councilors, by notice to each of the members of said council, served personally or left at their usual place of abode.

Sec. 9. The city council shall have power to appoint a marshal, recorder (who shall be the auditor of public accounts), treasurer, assessor and collector, supervisor of streets, surveyor and attorney, a sexton, a sealer of weights and measures and all such other officers as may be necessary, define their duties, remove them from office at pleasure, and fix and establish the fees of all city officers.

Sec. 10. All officers elected in accordance with the fourth section of this act may be removed for cause from such office by a vote of two-thirds of the city council, and shall be furnished with the charges and have an opportunity to be heard in their defense; and the council shall have power to compel the attendance of witnesses and the production of papers, when necessary.

Sec. 11. When a vacancy shall happen by the death, resignation or removal of any officer, such vacancy may be filled by the city council; and every person elected or appointed to any office under this act shall, before he enters upon the duties thereof, take and subscribe an oath or affirmation that he will support the Constitution of the United States, the laws of this Territory and the ordinances of the city, and that he will well and truly perform all the duties of his office to the best of his knowledge and ability; and shall be required to give bonds as shall be prescribed by city ordinances, which oath and bond shall be filed with the city recorder.

Sec. 12. The city council shall have power to divide the city into wards and specify the boundaries thereof; and, when necessary, create additional wards and add to the number of councilors and proportion them among the several wards, as may be just and most conducive to the welfare of said city.

SEC. 13. The justices of the peace shall be conservators of the peace within the limits of the city, and shall give bonds and qualifiy as other justices of the peace; and, when so qualified, shall possess the same powers and jurisdiction, both in civil and criminal cases arising under the laws of the Territory, and may be commissioned as justices of the peace in and for said city by the governor. They shall account for and pay over all fines and forfeitures arising under the ordinances of the city into the city treasury, and all fines and forfeitures arising under the laws of the Territory into the county treasury, and shall issue such process as may be necessary to carry into effect all ordinances of said city.

SEC. 14. It shall be the duty of the recorder to make and keep accurate records of all ordinances made by the city council and all their proceedings in a corporate capacity; which record shall at all times be open to the inspection of the electors of the city and all other parties interested, and audit all accounts of said incorporation. He shall have and keep a plat of all surveys within the city; and he is hereby authorized to take the acknowledgment of deeds, transfers and other instruments of writing, and shall perform such other duties as may be required of him by city ordinance.

SEC. 15. The treasurer shall receive all money or funds belonging to the city, and shall keep an accurate account of all receipts and expenditures in such manner as the city council shall direct. He shall pay all funds that may come to hand, by virtue of his office, upon orders signed by the auditor of public accounts, and shall report to the city council a true account of his receipts and disbursements, as they may require.

SEC. 16. The city council shall have power within the city, by ordinance, to annually levy and collect taxes on the assessed value of all property in the city made taxable by the laws of the Territory, for the following named purposes, to wit: Not to exceed five mills on the dollar for contingent expenses, nor to exceed five mills on the dollar to open, improve and keep in repair the streets of the city. The city council is further empowered to divide the city into school districts, provide for the election of trustees, appoint a board of school inspectors, annually assess and collect and expend the necessary tax for school purposes, and for furnishing the city with water for irrigating and other purposes, and regulate and control the same; and furthermore, so far as may be necessary, control the water courses leading thereto.

SEC. 17. The city council shall have the management and control of all the finances and property of said city.

SEC. 18. To require, and it is hereby made the duty of every able-bodied male resident of the city, over the age of eighteen and under the age of fifty years, to labor not to exceed two days in each year upon the streets; but every person may, at his option, pay two dollars for the day he shall be so bound to labor: *Provided*, it be paid within five days from the time he shall be notified by the street supervisor. In default of payment as aforesaid, the same may be collected as other taxes.

SEC. 19. The council shall have power to borrow money for city purposes, the interest of which shall not exceed one-fourth of the city revenue arising from taxes of the previous year.

SEC. 20. The city council shall have power, by ordinance, to regulate the form of the assessment rolls. The annual assessment roll shall be returned by the assessor on or before the first Monday in June in each year, but the time may be extended or additions made thereto by order of the city council. On the return thereof, the city council shall fix a day for hearing objections thereto, and any person feeling aggrieved by the assessment of his property may appear at the time specified and make his objections, which shall be heard and determined upon by the city council; and they shall have power to alter, add to, take from and otherwise correct and revise said assessment roll.

SEC. 21. The collector shall be furnished, within thirty days after the assessment rolls are corrected, with a list of taxes to be collected; and if not paid when demanded, the collector shall have power to collect said taxes with interest and cost, by suit in the corporate name as may be provided by ordinance. The assessment roll shall in all cases be evidence on the part of the corporation.

SEC. 22. To appropriate and provide for the payment of the expenses and debts of the city.

SEC. 23. To make regulations to prevent the introduction of contagious diseases into the city; to make quarantine laws and enforce the same within the city and around it, not exceeding ten miles next beyond the boundaries thereof.

SEC. 24. To examine licenses and regulate the practice of surgeons and physicians; to prohibit, prevent and punish, by fine and imprisonment, the imposition of quacks and other medical pretenders; to establish hospitals and infirmaries, and make regulations for the government of the same; to make regulations to secure the health of the inhabitants; to declare what shall be nuisances and prevent and remove the same.

SEC. 25. To provide the city with water; to dig wells, lay pump logs and pipes and erect pumps in the streets for the extinguishment of fires and the convenience of the inhabitants.

SEC. 26. To direct or prohibit the location and management of houses for the storing of gunpowder, tar, pitch, rosin or other combustible and dangerous materials within the city, and to regulate the conveying of gunpowder.

SEC. 27. To exclusively control, regulate, repair, amend and clear the streets, alleys, bridges, sidewalks or crosswalks, and open, widen, straighten or vacate streets and alleys, and put drains or ditches and sewers therein, and prevent the incumbering of the streets in any manner, and protect the same from any encroachment or injury.

SEC. 28. To provide for the lighting of streets and erecting lamp posts; to erect market houses and establish markets and market places, and provide for the government and regulation thereof.

SEC. 29. To provide for the erection of all needful buildings for the use of the city and for enclosing, improving and regulating all public grounds belonging to the city.

SEC. 30. To license, regulate, prohibit or restrain the manufacturers, sellers or vendors of spirituous or fermented liquors, tavern keepers, dram or tippling shop keepers, boarding, victualing or coffee houses, restaurants, saloons or other houses or places for the selling or giving away of wines or other liquors, whether ardent, vinous or fermented.

SEC. 31. To license, tax and regulate auctioneers, merchants, and retailers, grocers, ordinaries, hawkers, peddlers, brokers, pawnbrokers and money changers.

SEC. 32. To regulate the selling or giving away of any ardent spirits or other intoxicating liquors by any shopkeeper, grocer or trader, to be drank in any shop, store, grocery, outhouse, yard, garden or other place within the city, except by persons or at places duly licensed; to forbid the selling or giving away of ardent spirits or other intoxicating liquors to any child, apprentice or servant, without the consent of his or her parent, guardian, master or mistress, or to any Indian.

SEC. 33. To regulate and license or prohibit butchers, and to revoke their license for malconduct in the course of trade; and to regulate, license or restrain the sale of fresh meat and vegetables in the city.

SEC. 34. To license, tax, regulate, suppress or prohibit billiard tables, pin alleys, nine or ten pin alleys, or table and ball alleys; to suppress or restrain all disorderly houses and groceries; to authorize the destruction and demolition of all instruments and devices used for the purpose of gaming; to prevent any riot, noise, disturbance or disorderly assemblage; and to restrain and punish vagrants, mendicants, street beggars and prostitutes.

SEC. 35. To regulate, license, suppress or prohibit all exhibitions of common showmen, shows of every kind, concerts or other musical entertainments, exhibitions of natural or artificial curiosities, caravans, circuses, theatrical performances, ball rooms and all other exhibitions and amusements.

SEC. 36. To license, tax and regulate hacking, carriages, wagons, carts and drays, and fix the rates to be charged for the carrying of persons and for wagonage, cartage and drayage of property as also to license and regulate porters and fix the rates of porterage.

SEC. 37. To provide for the prevention and extinguishment of fires; to regulate the fixing of chimneys and the flues thereof and stove pipes; and to organize and establish fire companies.

SEC. 38. To regulate and order parapet walls and other partition fences.

SEC. 39. To establish standard weights and measures and regulate the weights and measures to be used in the city, in all cases not provided by law.

SEC. 40. To provide for the inspection and measuring of lumber and other building materials, and for the measurement of all kinds of mechanical work.

SEC. 41. To provide for the inspection and weighing of hay, lime and stone coal, and the measuring of charcoal, firewood and other fuel to be sold or used within the city.

SEC. 42. To provide for and regulate the inspection of tobacco, beef, pork, flour and meal; also beer, whisky, brandy and all other spirituous or fermented liquors.

SEC. 43. To regulate the weight and quality of bread sold and used in the city.

SEC. 44. The city council shall have exclusive power within the city, by ordinance, to license, regulate or restrain the keeping of ferries and toll bridges.

SEC. 45. To provide for taking the enumeration of the inhabitants of the city, to regulate the burial of the dead and registration of births and deaths; to direct the returning and keeping of bills of mortality; and to impose penalties on physicians, sextons and others for any default in the premises.

SEC. 46. To prevent horse racing, immoderate riding or driving in the streets, and to authorize their being stopped by any person; to punish or prohibit the abuse of animals; to compel persons to put up posts in front of their lots to fasten their horses and other animals; to compel the fastening of horses, mules, oxen or other animals attached to vehicles, whilst standing or remaining in the streets.

SEC. 47. To prevent the incumbering of the streets or sidewalks, lanes, alleys, and public grounds with carriages, tents, wagons, carts, sleighs, horses or other animals, sleds, wheelbarrows, boxes, lumber, timber, firewood, posts, awnings, signs, adobies or any material or substance whatever.

SEC. 48. To restrain, regulate or prohibit the running at large of cattle, horses, mules, sheep, swine, goats and all kinds of poultry; and to tax, prevent or regulate the keeping of dogs, and to authorize the destruction of the same, when at large contrary to city ordinance.

SEC. 49. To compel the owner or occupant of any grocery, cellar, tallow chandler shop, soap factory, tannery, stable, barn, privy, sewer or any unwholesome place, to cleanse, remove or abate the same from time to time, as often as may be necessary for the health, comfort and convenience of the inhabitants of said city.

SEC. 50. To direct the location and management of and regulate breweries and tanneries; and to direct the location, management and construction of, and restrain or prohibit within the city distilleries, slaughtering establishments, and all establishments or places where nauseous, offensive or unwholesome business may be carried on.

SEC. 51. To prevent any person from bringing, depositing or having within the limits of the city any dead carcass or any unwholesome substance, and to require the removal or destruction of the same by any person who shall have placed or caused to be placed upon or near his premises or near any of the streams of this city any such substances, or any putrid or unsound beef, pork, or fish, hides or skins of any kind; and on his default to authorize the removal or destruction of the same by any officer of said city.

SEC. 52. To direct and regulate the planting and preserving of trees in the streets and public grounds, and regulate the fencing of lots within the boundaries of the city.

SEC. 53. To prevent the ringing of bells, the blowing of horns and bugles, the crying of goods and all other noises, performances and devices tending to disturb the peace and quiet of the said city.

SEC. 54. To grant and issue licenses, and direct the manner of issuing and registering thereof. Bonds may be taken, on the granting of licenses, for the due observance of the ordinances of the city council.

SEC. 55. To require every merchant, retailer, trader and dealer in merchandise or property of every description which is sold by measure or weight, to cause their weights and measures to be sealed by the city sealer and to be subject to his inspection, the standard of which weights and measures shall be conformable to those established by law.

SEC. 56. The city council shall have power to make such ordinances and resolutions, not contrary to the Constitution and laws of the United States and the laws of the Territory, as may be necessary and expedient to carry into effect the powers vested in the city council or any officer of said city by this act, and enforce observance of all ordinances and resolutions made in pursuance of this act, by penalties not exceeding one hundred dollars, or imprisonment not to exceed six months, or both.

SEC. 57. The city council shall have exclusive authority and power to establish and regulate the police of the city; to impose fines, forfeitures and penalties for the breach of any ordinance; to provide for the recovery of such fines and forfeitures and the enforcement of such penalties; and to pass, make, ordain, establish and execute all such ordinances, not repugnant to the Constitution and laws of the United States or the laws of this Territory, as they may deem necessary for carrying into effect and execution the powers specified in this act, and for the peace, good order, regulation, convenience and cleanliness of the city, for the protection of property therein from destruction by fire or otherwise, and for the health, safety and happiness of the inhabitants thereof.

SEC. 58. To provide for the punishment of offenders and vagrants by imprisonment in the county or city jail, or by compelling them to labor on the streets or other public works until the same shall be fully paid, in all cases where such offenders or vagrants shall fail or refuse to pay the fines and ferfeitures which may be awarded against them.

SEC. 59. All ordinances passed by the city council shall, within one month after they shall have been passed, be published in some newspaper printed in said city, or certified copies thereof be posted up in three of the most public places in the city.

SEC. 60. All ordinances of the city may be proven by the seal of the corporation; and when printed or published in book form, purporting to be printed or published by the authority of the city council, the same shall be received in evidence in all courts or places, without further proof.

SEC. 61. When it shall be necessary to take private property for opening, widening, or altering any public street, lane, avenue or alley, the corporation shall make a just compensation therefor to the person whose property is taken; and if the amount of such compensation cannot be agreed upon, the justice of the peace shall cause the same to be ascertained by a jury of six disinterested men, who shall be inhabitants of the city.

SEC. 62. All jurors, impaneled to inquire into the amounts of benefits or damages that shall happen to the owners of property so proposed to be taken, shall first be sworn to that effect; and shall return to the mayor or presiding officer of the city council their inquest in writing, signed by each juror.

SEC. 63. All officers of the city, created conservators of the peace by this act, shall have power to arrest, or cause to be arrested, with or without process, all persons who shall break the peace, commit for examination and, if necessary, detain such persons in custody forty-eight hours in the city prison or other safe place, and shall have and exercise such other powers, as conservators of the peace, as the city council may prescribe.

Sec. 64. The city council shall cause to be published in some newspaper printed in the city of Wellsville, or posted up in three public places, on or before the first day of December in each year, a statement of the amount of city revenue, specifying in said statement whence derived and for what disbursed.

VI. HYRUM.

An Act incorporating Hyrum city, in Cache county.

[*Approved February* 10, 1870.]

Sec. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That all that district of country embraced within the following boundaries, to wit:—Commencing at the south-east corner of block fourteen, in Hyrum city plot, thence east one and one-half miles, thence south one and one-half miles, thence west three miles, thence north three miles, thence east three miles, thence south one and one-half miles to the parallel line of the place of beginning shall be known and designated under the name of Hyrum city, and the inhabitants thereof are hereby constituted a body corporate and politic by the name aforesaid, and shall have succession, and may have and use a common seal, which they may change and alter at pleasure.

Sec. 2. The inhabitants of said city by the name and style aforesaid, shall have power to sue and be sued, to plead and be impleaded, defend and be defended in all courts of law and equity and in all actions whatsoever; to purchase, receive and hold property, real and personal, in said city; to purchase, receive and hold real property beyond the city for burying grounds or other public purposes for the use of the inhabitants of said city; to sell, lease, convey or dispose of property, real and personal, for the benefit of said city; to improve and protect such property, and to do all other things in relation thereto as natural persons.

Sec. 3. There shall be a city council, to consist of a mayor and six councilors, who shall have the qualifications of electors of said city, and shall be chosen by the qualified voters thereof, and shall hold their offices for two years and until their successors shall be elected and qualified. The city council shall judge of the qualifications, elections and returns of their own members, and a majority of them shall form a quorum to do business; but a smaller number may adjourn from day to day and compel the attendance of absent members under such penalties as may be prescribed by ordinance; there shall also be elected in like manner two justices of the peace, who shall have the qualifications of voters, be commissioned by the governor, and have jurisdiction in all cases arising under the ordinances of the city.

SEC. 4. The mayor and councilors, before entering upon the duties of their offices, shall take and subscribe an oath or affirmation that they will support the Constitution of the United States and the laws of this Territory, and that they will well and truly perform all the duties of their offices to the best of their skill and abilities.

SEC. 5. A mayor and six councilors shall be elected biennially, and the first election under this act shall be at such time in said city as the probate judge of Cache county shall direct: *Provided*, said election shall be on or before the first Monday in August next. Said election shall be held and conducted as now is provided by law for the holding of elections for county and Territorial officers; and at the said first election all electors within said city limits shall be entitled to vote.

SEC. 6. The clerks of election shall leave with each person elected, or at his usual place of residence, within five days after the election, a written notice of his election; and each person so notified shall, within ten days after the election, take the oath or affirmation hereinbefore mentioned, a certificate of which oath shall be deposited with the recorder, whose appointment is hereinafter provided for, and be by him preserved; and all subsequent elections shall be held, conducted and returns thereof made, as may be provided for by ordinance of the city council.

SEC. 7. The city council shall have power to levy and collect taxes for city purposes upon all taxable property, real and personal, within the limits of the city, not exceeding one-half of one per cent. per annum, upon the assessed value thereof; and may enforce the payment of the same, to be provided for by ordinance not repugnant to the Constitution of the United States or the laws of this Territory.

SEC. 8. The city council shall have power to appoint a recorder, treasurer, assessor and collector, marshal and supervisor of streets. They shall also have the power to appoint all such other officers, by ordinance, as may be necessary, define the duties of all city officers and remove them from office at pleasure.

SEC. 9. The city council shall have power to require of all officers appointed in pursuance of this act, bonds with security for the faithful performance of their respective duties, and also to require of all officers appointed as aforesaid, to take an oath for the faithful performance of the duties of their respective offices.

SEC. 10. The city council shall have power and authority to make, ordain, establish and execute all such ordinances, not repugnant to the Constitution of the United States or the laws of this Territory, as they may deem necessary for the peace, benefit, good order, regulation, convenience, and cleanliness of said city; for the protection of property therein from destruction by fire or otherwise, and for the health and happiness of the inhabitants thereof; and shall have control of the water and water courses leading to the city: *Provided*, that such control shall not be exercised to the injury of any rights already acquired by actual settlers thereon, and shall have control of the water courses and mill privileges within said city; but in no case shall they interfere with the natural rights of others heretofore acquired in relation to water. They shall have power to fill all vacancies that may happen by death, resignation, removal or otherwise, of any of the officers herein made elective; to fix and establish the fees of the officers of said corporation. The city council shall have power to divide the city into wards and specify the boundaries thereof.

SEC. 11. All ordinances passed by the city council shall, within ten days after they shall have been passed, be published in some newspaper printed in said city, or certified copies thereof be posted up in three of the most public places in the city. They shall not be in force until thus published or posted up.

SEC. 12. All ordinances of the city may be proven by the seal of the corporation affixed thereto; and, when printed or published in book or pamphlet form, purporting to be printed or published by the authority of the corporation, the same shall be received in evidence in all courts and places without further proof.

SEC. 13. The justices of the peace of said city shall have all the powers of other justices of the peace, both in civil and criminal cases, arising under the laws of the Territory. They shall perform the same duties, be governed by the same laws and give the same bonds and securities as other justices of the peace. They shall have exclusive original jurisdiction in all cases arising under the ordinances of the corporation, and shall issue such process as may be necessary to carry such ordinances into execution. Appeals may be had from any decision or judgment of said justices arising under the ordinances of said city, or the laws of the Territory, in the same manner as appeals are or may be taken from other justices of the peace.

SEC. 14. The mayor shall be the chief executive officer of said corporation; he shall preside in the city council, and shall have power to veto any ordinance when not passed by two-thirds majority, and it shall be his duty to sign all city ordinances.

SEC. 15. The city council shall have power to restrain, regulate or prohibit the running at large of cattle, horses, mules, sheep, swine, goats, and all kinds of poultry; and to tax and regulate the keeping of dogs, and to authorize the destruction of the same, when at large contrary to city ordinance.

SEC. 16. To license, regulate, prohibit or restrain the manufacturing, selling or giving away of spirituous, vinous or fermented liquors; to tax and regulate tavern keepers, dram or tippling shop keepers, victualing or coffee houses, restaurants, saloons, or other houses or places for the selling or giving away of ardent, vinous or fermented liquors.

SEC. 17. The city council shall have exclusive power, by ordinance, to regulate the police of the city; to license, tax and regulate auctioneers, merchants and retailers; to license, tax and regulate theatrical and other exhibitions, shows and amusements; to prohibit and suppress gaming, bawdy and other disorderly houses.

SEC. 18. This act shall be in force on and after the first day of April, one thousand eight hundred and seventy, and may be amended at the pleasure of the Legislative Assembly.

CHAPTER IV.

OF INCORPORATED CITIES IN BOX ELDER COUNTY.

I. Brigham. II. Corinne. III. Willard.

I. BRIGHAM.

An Act incorporating Brigham city.

[*Approved January* 12, 1867.]

Sec. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That all that district of country embraced in the following boundaries in Box Elder county, to wit: Commencing at the south-east corner of Martin Luther Ensign's land claim on the Territorial road, about one mile north-east of the court house in Brigham city, thence west to the Big Slough between said Territorial road and Bear river west, thence south along said slough to a point west of the lane passing between the two enclosures called the Welsh field and Welsh settlement, thence east to the west line of Cache county, thence north to a point east of the place of beginning, and thence west to the place of beginning, shall be known and designated under the name and style of Brigham city; and the inhabitants thereof are hereby constituted a body corporate and politic by the name aforesaid, and shall have perpetual succession, and may have and use a common seal which they may change and alter at pleasure.

Sec. 2. The inhabitants of said city, by the name and style aforesaid, shall have power to sue and be sued, to plead and be impleaded, defend and be defended in all courts of law and equity, and in all actions whatsoever; to purchase, receive and hold property real and personal in said city; to purchase, receive and hold real property beyond the city for burying grounds and other public purposes for the use of the inhabitants of said said city; to sell, lease, convey or dispose of property real and personal for the benefit of said city; to improve and protect such property, and to do all other things in relation thereto as natural persons.

Sec. 3. There shall be a city council, to consist of a mayor and five councilors, who shall have the qualifications of electors of said city, and shall be chosen by the qualified voters thereof, and shall hold their offices for two years and until their successors shall be elected and qualified. The city council shall judge of the qualifications, elections and returns of their own members, and a majority of them shall form a quorum to do business; but a smaller number may adjourn from day to day, and compel the attendance of absent members under such penalties as may be prescribed by ordinance; there shall also be elected in like manner two justices of the peace, who shall have the qualifications of voters, be commissioned by the governor and have jurisdiction in all cases arising under the ordinances of the city.

SEC. 4. The mayor and councilors, before entering upon the duties of their offices, shall take and subscribe an oath or affirmation that they will support the Constitution of the United States and the laws of this Territory, and that they will well and truly perform all the duties of their offices to the best of their skill and abilities.

SEC. 5. One mayor and five councilors shall be elected biennially, and the first election under this act shall be at such time in said city as the probate judge of Box Elder county shall direct: *Provided*, said election shall be on or before the first Monday in August next. Said election shall be held and conducted as now is provided by law for holding of elections for county and Territorial officers; and, at the said first election, all electors within said city limits shall be entitled to vote.

SEC. 6. The clerks of election shall leave with each person elected, or at his usual place of residence, within five days after the election, a written notice of his election; and each person so notified shall, within ten days after the election, take the oath or affirmation hereinbefore mentioned, a certificate of which oath shall be deposited with the recorder, whose appointment is hereinafter provided for, and be by him preserved; and all subsequent elections shall be held, conducted and returns thereof be made as may be provided for by ordinance of the city council.

SEC. 7. The city council shall have authority to levy and collect taxes for city purposes upon all taxable property, real and personal, within the limits of the city, not exceeding one-half of one per cent. per annum upon the assessed value thereof; and may enforce the payment of the same, to be provided for by ordinance not repugnant to the Constitution of the United States or to the laws of this Territory.

SEC. 8. The city council shall have power to appoint a recorder, treasurer, assessor and collector, marshal and supervisor of streets. They shall also have the power to appoint all such other officers, by ordinance, as may be necessary, define the duties of all city officers and remove them from office at pleasure.

SEC. 9. The city council shall have power to require of all officers, appointed in pursuance of this act, bonds with security, for the faithful performance of their respective duties, and also to require of all officers, appointed as aforesaid, to take an oath for the faithful performance of the duties of their respective offices.

SEC. 10. The city council shall have power and authority to make, ordain, establish and execute all such ordinances, not repugnant to the Constitution of the United States or the laws of this Territory, as they may deem necessary for the peace, benefit, good order, regulation, convenience and cleanliness of said city; for the protection of property therein from destruction by fire or otherwise, and for the health and happiness of the inhabitants thereof; and shall have control of the water and water courses leading to the city: *Provided*, that such control shall not be exercised to the injury of any rights already acquired by actual settlers thereon; and shall have control of the water courses and mill privileges within said city; but in no case shall they interfere with the natural rights of others heretofore acquired in relation to water. They shall have power to fill all vacancies that may happen by death, resignation, removal or otherwise, of any of the officers herein made elective; to fix and establish the fees of the officers of said corporation. The city council shall have power to divide the city into wards and specify the boundaries thereof.

SEC. 11. All ordinances passed by the city council shall, within ten days after they shall have been passed, be published in some newspaper printed in said city, or certified copies thereof be posted up in three of the most public places in the city. They shall not be in force until thus published or posted up.

SEC. 12. All ordinances of the city may be proven by the seal of the corporation affixed thereto; and, when printed or published in book or pamphlet form, purporting to be printed or published by the authority of the corporation, the same shall be received in evidence in all courts and places without further proof.

SEC. 13. The justice of the peace of said city shall have all the powers of other justices of the peace, both in civil and criminal cases arising under the laws of the Territory. They shall perform the same duties, be governed by the same laws and give the same bonds and securities as other justices of the peace. They shall have exclusive jurisdiction in all cases arising under the ordinances of the corporation, and shall issue such process as may be necessary to carry such ordinances into execution. Appeals may be had from any decision or judgment of said justices, arising under the ordinances of said city, or the laws of the Territory, in the same manner as appeals are or may be taken from other justices of the peace.

SEC. 14. The mayor shall be chief executive officer of said corporation; he shall preside in the city council, and shall have power to veto any ordinance when not passed by four-fifths majority, and it shall be his duty to sign all city ordinances.

SEC. 15. The city council shall have power to restrain, regulate or prohibit the running at large of cattle, horses, mules, sheep, swine, goats and all kinds of poultry; and to tax and regulate the keeping of dogs, and to authorize the destruction of the same when at large contrary to city ordinance.

SEC. 16. To license, regulate, prohibit or restrain the manufacturing, selling or giving away of spirituous, vinous or fermented liquors; [to tax and regulate] tavern keepers, dram or tippling shop keepers, boarding victualing, or coffee houses, restaurants, saloons or other houses or places for the selling or giving away of ardent, vinous or fermented liquors.

SEC. 17. The city council shall have exclusive power, by ordinance, to regulate the police of the city; to license, tax and regulate auctioneers, merchants and retailers; to license, tax and regulate theatrical and other exhibitions, shows and amusements; to tax, restrain, prohibit and suppress gaming, bawdy and other disorderly houses.

SEC. 18. This act shall be in force on and after the tenth day of February, one thousand eight hundred and sixty-seven, and may be amended or repealed at the pleasure of the Legislative Assembly.

II. CORINNE.

An Act incorporating Corinne city.

[*Approved February* 18, 1870.]

SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That all that district of country embraced in the following boundaries in Box Elder county, to wit: Beginning at the south-west corner of section one, United States survey, township nine north, range three west, thence north two miles to north-west corner of section thirty-six, township ten north, range three west, thence east to the centre of main channel of Bear river, thence down the main channel of the said Bear river to the line between sections six and seven, township nine north, range two west, thence west to place of beginning, shall be known and designated under the name and style of Corinne city; and the inhabitants thereof are hereby constituted a body corporate and politic, by the name aforesaid, and shall have succession; and may have and use a common seal, which they may change and alter at pleasure.

SEC. 2. The inhabitants of said city by the name and style aforesaid, shall have power to sue and be sued, to plead and be impleaded, defend and be defended in all courts of law and equity and in all actions whatsoever; to purchase, receive and hold property, real and personal, in said city; to purchase, receive and hold real property beyond the city for burying grounds or other public purposes for the use of the inhabitants of said city; to sell, lease, convey or dispose of property, real and personal, for the benefit of said city; to improve and protect such property, and to do all other things in relation thereto as natural persons.

SEC. 3. There shall be a mayor and ten councilors, who shall have the qualifications of electors of said city, and shall be chosen by the qualified voters thereof; and five of the councilors chosen at the first election shall hold office for one year, and five of them for two years, and until their successors are elected and qualified; the terms of office of the councilors elected at the first election shall be determined by lot at the first meeting of the council. After the first election five councilors shall be elected annually. The city council shall judge of the qualifications, elections and returns of their own members, and a majority of them shall form a quorum to do business; but a smaller number may adjourn from day to day and compel the attendance of absent members under such penalties as may be prescribed by ordinance; there shall also be elected in like manner two justices of the peace, who shall have the qualifications of voters, be commissioned by the governor, and have jurisdiction in all cases arising under the ordinances of the city.

SEC. 4. The mayor and councilors, before entering upon the duties of their offices, shall take and subscribe an oath or affirmation that they will support the Constitution of the United States and the laws of this Territory, and that they will well and truly perform all the duties of their offices to the best of their skill and abilities.

SEC. 5. A mayor shall be elected biennially, and shall hold office for two years, and until his successor is elected and qualified; and the first election under this act shall be at such time and place in said city as the probate judge of Box Elder county shall direct: *Provided,* said election shall be on or before the first Monday in April next. Said election shall be held and conducted as now is provided by law for the holding of elections for county and Territorial officers; and at the said first election all citizens of the United States, who have resided for six months last past within said city limits, shall be deemed electors and entitled to vote at said first election.

SEC. 6. The clerks of election shall leave with each person elected, or at his usual place of residence, within five days after the election, a written notice of his election; and each person so notified shall, within ten days after the election, take the oath or affirmation hereinbefore mentioned, a certificate of which oath shall be deposited with the recorder, whose appointment is hereinafter provided for, and be by him preserved; and all subsequent elections shall be held, conducted and returns thereof made, as may be provided for by ordinance of the city council.

SEC. 7. The city council shall have authority to levy and collect taxes for city purposes upon all taxable property, real and personal, within the limits of the city, not exceeding one-half of one per cent. per annum, upon the assessed value thereof; and may enforce the payment of the same, to be provided for by ordinance not repugnant to the Constitution of the United States or to the laws of this Territory.

SEC. 8. The city council shall have power to appoint a recorder, treasurer, assessor and collector, marshal and supervisor of streets, and all such other officers, by ordinance, as may be necessary, define the duties of all city officers and remove them from office at pleasure.

SEC. 9. The city council shall have power to require of all officers appointed in pursuance of this act, bonds with security for the faithful performance of their respective duties, and also to require of all officers appointed as aforesaid, to take an oath for the faithful performance of the duties of their respective offices.

SEC. 10. The city council shall have power and authority to make, ordain, establish and execute all such ordinances, not repugnant to the Constitution of the United States or the laws of this Territory, as they may deem necessary for the peace, benefit, good order, regulation, convenience, and cleanliness of said city; for the protection of property therein from destruction by fire or otherwise, and for the health and happiness of the inhabitants thereof; and shall have control of the water and water courses leading to the city: *Provided*, that such control shall not be excrcised to the injury of any rights already acquired by actual settlers thereon, and shall have control of the water and mill privileges within said city; but in no case shall they interfere with the natural rights of others heretofore acquired in relation to water. Vacancies in the city council shall be filled by special elections, held after public notice of at least ten days. The city council shall have power to divide the city into wards and specify the boundaries thereof, and to fix and establish the fees of the officers of said corporation.

SEC. 11. All ordinances passed by the city council shall, within ten days after they shall have been passed, be published in some newspaper printed in said city, or certified copies thereof be posted up in three of the most public places in the city. They shall not be in force until thus published or posted up.

SEC. 12. All ordinances of the city may be proven by the seal of the corporation affixed thereto; and, when printed or published in book or pamphlet form, purporting to be printed or published by the authority of the corporation, the same shall be received in evidence in all courts and places without further proof.

SEC. 13. The justices of the peace of said city shall have all the powers of other justices of the peace, both in civil and criminal cases, arising under the laws of the Territory. They shall perform the same duties, be governed by the same laws and give the same bonds and securities as other justices of the peace. They shall have exclusive original jurisdiction in all cases arising under the ordinances of the corporation, and shall issue such process as may be necessary to carry such ordinances into execution. Appeals may be had from any decision or judgment of said justices arising under the ordinances of said city, or the laws of the Territory, in the same manner as appeals are or may be taken from other justices of the peace.

SEC. 14. The mayor shall be the chief executive officer of said corporation; he shall preside in the city council, and shall have power to veto any ordinance when not passed by four-fifths majority, and it shall be his duty to sign all city ordinances.

SEC. 15. The city council shall have power to restrain, regulate or prohibit the running at large of cattle, horses, mules, sheep, swine, goats, and all kinds of poultry in said city; and to tax and regulate the keeping of dogs, and to authorize the destruction of the same, when at large contrary to city ordinance.

SEC. 16. To license, regulate, prohibit or restrain the manufacturing, selling or giving away of spirituous, vinous or fermented liquors; to tax and regulate tavern keepers, dram or tippling shop keepers, victualing or coffee houses, restaurants, saloons, or other houses or places for the selling or giving away of ardent, vinous or fermented liquors.

SEC. 17. The city council shall have exclusive power, by ordinance, to regulate the police of the city; to provide for the punishment of offenders and vagrants by imprisonment in the city jail, or by compelling them to labor on the streets or other public works, until the same shall be fully paid in all cases where such offenders or vagrants shall fail or refuse to pay the fines or forfeitures which may be awarded against them; to license, tax and regulate auctioneers, merchants and retailers; to license, regulate and tax theatrical and other exhibitions, shows and amusements; to restrain, prohibit and suppress gambling, gaming, bawdy and other disorderly houses.

SEC. 18. This act shall be in force from and after its passage, and may be amended at the pleasure of the Legislative Assembly.

III. WILLARD.

An Act incorporating Willard city, in Box Elder county.

[*Approved February* 16, 1870.]

SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That all that district of country embraced in the following boundaries in Box Elder county, to wit: Commencing at the southwest corner of section thirty-five, township eight north, range two west, thence west one mile, thence north three miles, thence east two miles, thence south three miles, thence west one mile, to place of beginning, shall be known and designated under the name and style of Willard city; and the inhabitants thereof are hereby constituted a body corporate and politic by the name aforesaid, and shall have perpetual succession, and may have and use a common seal, which they may change and alter at pleasure.

SEC. 2. The inhabitants of said city, by the name and style aforesaid, shall have power to sue and be sued, to plead and be impleaded, defend and be defended in all conrts of law and equity and in all actions whatsoever; to purchase, receive and hold property, real and personal, in said city; to purchase, receive and hold real property beyond the city for burying grounds or other public purposes for the use of the inhabitants of said city; to sell, lease, convey or dispose of property, real and personal, for the benefit of said city; to improve and protect such property, and to do all other things in relation thereto as natural persons.

SEC. 3. There shall be a city council, to consist of a mayor and five councilors, who shall have the qualifications of electors of said city, and shall be chosen by the qualified voters thereof, and shall hold their offices for two years and until their successors shall be elected and qualified. The city council shall judge of the qualifications, elections and returns of their own members, and a majority of them shall form a quorum to do business; but a smaller number may adjourn from day to day and compel the attendance of absent members under such penalties as may be prescribed by ordinance; there shall also be elected in like manner two justices of the peace, who shall have the qualifications of voters, be commissioned by the governor, and have jurisdiction in all cases arising under the ordinances of the city.

SEC. 4. The mayor and councilors, before entering upon the duties of their offices, shall take and subscribe an oath or affirmation that they will support the Constitution of the United States and the laws of this Territory, and that they will well and truly perform all the duties of their offices to the best of their skill and abilities.

SEC. 5. A mayor and five councilors shall be elected biennially, and the first election under this act shall be at such time and place in said city as the probate judge of Box Elder county shall direct: *Provided,* said election shall be on or before the first Monday in August next. Said election shall be held and conducted as now is provided by law for the holding of elections for county and Territorial officers; and, at the said first election, all electors within said city limits shall be entitled to vote.

SEC. 6. The clerk of election shall leave with each person elected or at his usual place of residence, within five days after the election a written notice of his election, and each person so notified shall, within ten days after the election, take the oath or affirmation hereinbefore mentioned, a certificate of which oath shall be deposited with the recorder, whose appointment is hereinafter provided for, and be by him preserved; and all subsequent elections shall be held, conducted and returns thereof made, as may be provided for by ordinance of the city council.

SEC. 7. The city council shall have authority to levy and collect taxes for city purposes, upon all taxable property, real and personal, within the limits of the city, not exceeding one-half of one per cent. per annum upon the assessed value thereof, and may enforce the payment of the same to be provided for by ordinance not repugnant to the Constitution of the United States or to the laws of this Territory.

SEC. 8. The city council shall have power to appoint a recorder, treasurer, assessor and collector, marshal and supervisor of streets, and to appoint all such other officers, by ordinance as may be necessary, define the duties of all city officers and remove them from office at pleasure.

SEC. 9. The city council shall have power to require of all officers appointed in pursuance of this act, bonds with security for the faithful performance of their respective duties, and also to require of all officers appointed as aforesaid, to take an oath for the faithful performance of the duties of their respective offices.

SEC. 10. The city council shall have power and authority to make, ordain, establish and execute all such ordinances, not repugnant to the Constitution of the United States or the laws of this Territory, as they may deem necessary for the peace, benefit, good order, regulation, convenience and cleanliness of said city; for the protection of property therein from destruction by fire or otherwise and for the health and happiness of the inhabitants thereof; and shall have control of the water and water courses leading to the city: *Provided*, that such control shall not be exercised to the injury of any rights already acquired by actual settlers thereon; and shall have control of the water courses and mill privileges within said city; but in no case shall they interfere with the natural rights of others heretofore acquired in relation to water. They shall have power to fill all vacancies that may happen by death, resignation, removal or otherwise, of any of the officers herein made elective; to fix and establish the fees of the officers of said corporation. The city council shall have power to divide the city into wards and specify the boundaries thereof.

SEC. 11. All ordinances passed by the city council shall, within ten days after they shall have been passed, be published in some newspaper printed in said city, or certified copies thereof be posted up in three of the most public places in the city. They shall not be in force until thus published or posted up.

SEC. 12. All ordinances of the city may be proven by the seal of the corporation affixed thereto; and, when printed or published in book or pamphlet form, purporting to be printed or published by the authority of the corporation, the same shall be received in evidence in all courts and places without further proof.

SEC. 13. The justices of the peace of said city shall have all the powers of other justices of the peace, both in civil and criminal cases, arising under the laws of the Territory. They shall perform the same duties, be governed by the same laws, and give the same bonds and securities as other justices of the peace. They shall have exclusive original jurisdiction in all cases arising under the ordinances of the corporation, and shall issue such process as may be necessary to carry such ordinances into execution. Appeals may be had from any decision or judgment of said justices arising under the ordinances of said city, or the laws of the Territory, in the same manner as appeals are or may be taken from other justices of the peace.

SEC. 14. The mayor shall be the chief executive officer of said corporation; he shall preside in the city council, and shall have power to veto any ordinance when not passed by four-fifths majority, and it shall be his duty to sign all city ordinances.

SEC. 15. The city council shall have power to restrain, regulate or prohibit the running at large of cattle, horses, mules, sheep, swine, goats, and all kinds of poultry; and to tax and regulate the keeping of dogs and to authorize the destruction of the same when at large contrary to city ordinance.

SEC. 16. To license, regulate, prohibit or restrain the manufacturing, selling or giving away of any spirituous, vinous or fermented liquors; to tax and regulate tavern keepers, dram or tippling shop keepers, victualing or coffee houses, restaurants, saloons or other houses or places for the selling or giving away of ardent, vinous or fermented liquors.

SEC. 17. The city council shall have exclusive power, by ordinance, to regulate the police of the city; to license, tax and regulate auctioneers, merchants and retailers; to license, tax and regulate theatrical and other exhibitions, shows and amusements; to prohibit and suppress gaming, bawdy and other disorderly houses.

SEC. 18. This act shall be in force on and after the first day of April, one thousand eight hundred and seventy, and may be amended or altered at the pleasure of the Legislative Assembly.

CHAPTER V.

OGDEN.

An Act to incorporate Ogden city.

[*Approved January* 18, 1861.]

SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That all that district of country in Weber county, embraced in the following boundaries, to wit: Beginning at the mouth of Burch creek cañon, thence running due west to a point due south of the confluence of Weber and Ogden rivers, thence due north passing through the junction of Weber and Ogden rivers to the street running east between ranges five and six, North Ogden survey, thence east to the base of the mountain, thence in a southerly direction along the base of the mountain to the place of beginning, shall be known and designated by the name and style of Ogden city; and the inhabitants thereof are hereby constituted a body corporate and politic, by the name aforesaid; with perpetual succession, and shall have and use a common seal, which they may change and alter at pleasure.

SEC. 1. That the first section of an act incorporating Ogden city be so amended that said city be bounded on the south by a parallel line running east and west, one-half mile south of the southern boundary line of township six north, United States survey. So much of section one of an act entitled an act incorporating Ogden city, approved January eighteenth, eighteen hundred and sixty-one, as conflicts with this act, is hereby repealed. (1)

SEC. 2. The inhabitants of said city, by the name and style aforesaid, shall have power to sue and be sued, to plead and be impleaded, defend and be defended in all courts of law and equity, and in all actions whatsoever; to purchase, receive, hold, sell, lease, convey and dispose of property real and personal for the benefit of said city, both within and without its corporate boundaries; to improve and protect such property, and to do all other things in relation thereto as natural persons.

SEC. 3. The municipal government of said city is hereby vested in a city council, to be composed of a mayor, three aldermen, one from each ward, and five councilors, who shall have the qualifications of electors in said city, and shall be chosen by the qualified voters thereof, and shall hold their office for two years, and until their successors are elected and qualified.

SEC. 4. An election shall be held on the second Monday in February next, and every two years thereafter, on said day, at which there shall be elected, one mayor, three aldermen and five councilors; and the persons respectively receiving the highest number of votes cast in the city, for said officers, shall be declared elected. When two or more candidates shall have an equal number of votes for the same office, the election shall be determined by the city council.

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(1) Amendment of Feb. 15, 1872.

SEC. 5. The first election under this act shall be conducted in the following manner, to wit: The county clerk of Weber county shall cause notice of the time and place, and the number and kind of officers to be chosen, to be posted up in four public places in said city, at least ten days previous to said election. Two judges shall be selected by the probate judge of Weber county, at least one week previous to the day of election. Said judges shall choose two clerks, and the judges and clerks, before entering upon their duties, shall take and subscribe an oath or affirmation for the faithful discharge thereof. The poll shall be open at eight o'clock a.m., and shall close at six o'clock p.m. At the close of the election the judges shall seal up the ballot box and the list of names of the electors and transmit the same, within two days, to the county clerk of Weber county. As soon as the returns are received, the county clerk, in the presence of the probate judge, shall unseal and examine them, and furnish within five days, to each person having the highest number of votes, a certificate of his election. In case of a tie, it shall be decided by lot drawn by the county clerk in presence of the probate judge.

SEC. 6. All subsequent elections held under this act shall be held, conducted, and returns thereof made as may be provided for by ordinance of the city council.

SEC. 7. The city council shall be judge of the qualifications, elections and returns of their own members; and a majority of them shall form a quorum to do business, shall determine the rules of their own proceedings, and shall meet at such time and place as they may direct; the mayor shall preside when present, and have a casting vote; and in the absence of the mayor, any alderman present may be appointed to preside over said meeting.

SEC. 8. The city council may hold stated meetings, and special meetings may be called by the mayor, or any two aldermen by notice to each of the members of said council, served personally or left at their usual place of abode.

SEC. 9. The city council shall have power to appoint a marshal, recorder (who shall be the auditor of public accounts), treasurer, assessor and collector, supervisor of streets, surveyor, an attorney, a sexton, a sealer of weights and measures, and all such other officers as may be necessary; define their duties, remove them from office at pleasure, and fix and establish the fees of all officers, jurors and witnesses.

SEC. 10. All officers elected in accordance with the fourth section of this act may be removed for cause from such office by a vote of two-thirds of the city council, and shall be furnished with the charges, and have an opportunity to be heard in his defense, and the council shall have power to compel the attendance of witnesses, and the production of papers when necessary.

SEC. 11. When any vacancy shall happen by the death, resignation or removal of any officer, such vacancy may be filled by the city council, and every person elected or appointed to any office under this act shall, before he enters upon the duties thereof, take and subscribe an oath or affirmation that he will support the Constitution of the United States, the laws of this Territory, and the ordinances of the city, and that he will well and truly perform all the duties of his office to the best of his knowledge and ability; and he may be required to give bonds as shall be prescribed by city ordinance, which oath and bond shall be filed with the city recorder. All persons appointed under this act to any office shall be commissioned by warrant under the corporate seal signed by the city recorder.

Sec. 12. The city council shall have power to divide the city into wards, and specify the boundaries thereof, and when necessary create additional wards, and add to the number of aldermen and councilors, and proportion them among the several wards as may be just and most conducive to the welfare of said city.

Sec. 13. The mayor and aldermen shall be conservators of the peace within the limits of the city, and shall give bonds and qualify as other justices of the peace, and when so qualified shall possess the same powers and jurisdiction, both in civil and criminal cases arising under the laws of the Territory, and may be commissioned as justices of the peace in and for said city, by the governor. They shall account for and pay over all fines and forfeitures arising under the ordinances of the city into the city treasury, and all fines and forfeitures arising under the laws of the Territory into the county treasury, and shall issue such process as may be necessary to carry into effect all ordinances of said city. Appeals may be had from any decision or judgment of a mayor or alderman's court in the same manner as are or may be provided by statute for appeals from justices' courts, and they shall account for, and pay over to the city treasurer within three months all fines and forfeitures received by them, by virtue of their office, and they shall each keep a docket, subject at all times to the inspection of the city council and all other parties interested.

Sec. 14. All process issued by the mayor or an alderman shall be directed to the marshal, or other legal officer, and in execution thereof, he shall be governed by such rules and regulations as may be provided by city ordinance.

Sec. 15. It shall be the duty of the recorder to make and keep accurate records of all ordinances made by the city council, and all their proceedings in a corporate capacity, which record shall at all times be open to the inspection of the electors of the city, and all other parties interested, and audit all accounts of said incorporation. He shall have and keep a plat of all surveys within the city, and he is hereby authorized to take the acknowledgment of deeds, transfers and other instruments of writing, and shall perform such other duties as may be required of him by city ordinances.

Sec. 16. The treasurer shall receive all money or funds belonging to the city, and shall keep an accurate account of all receipts and expenditures in such manner as the city council shall direct. He shall pay all funds that may come to his hand, by virtue of his office, upon orders signed by the auditor of public accounts; and shall report to the city council a true account of his receipts and disbursements, as they may require.

SEC. 17. The city council shall have power, within the city, by ordinance to annually levy and collect taxes on the assessed value of all property in the city made taxable by the laws of the Territory, for the following named purposes, to wit: Not to exceed five mills on the dollar for contingent expenses, nor to exceed five mills on the dollar to open, improve and keep in repair the streets of the city. The city council is further empowered to divide the city into school districts, provide for the election of trustees, appoint a board of school inspectors, annually assess and collect and expend the necessary tax for school purposes and for furnishing the city with water for irrigating and other purposes, and regulate and control the same; and furthermore, so far as may be necessary, control the water courses leading thereto, in the immediate vicinity thereof.

SEC. 18. The city council shall have the management and control of the finances and property of said city.

SEC. 19. To require and it is hereby made the duty of every male resident of the city, over the age of eighteen and under the age of fifty years, to labor not to exceed two days in each year upon the streets; but every person may, at his option, pay one dollar and fifty cents for the day he shall be so bound to labor: *Provided*, it be paid within five days from the time he shall be notified by the street supervisor. In default of payment as aforesaid, the same may be collected as other taxes.

SEC. 20. The council shall have power to borrow money for city purposes, the interest of which shall not exceed one-fourth of the city revenue arising from taxes of the previous year.

SEC. 21. The city council shall have power by ordinance to regulate the form of the assessment rolls. The annual assessment roll shall be returned by the assessor on or before the first Monday of April in each year, but the time may be extended or additions made thereto by order of the city council. On the return thereof, the city council shall fix a day for hearing objections thereto; and any person feeling aggrieved by the assessment of his property may appear at the time specified and make his objections, which shall be heard and determined upon by the city council, and they shall have power to alter, add to, take from and otherwise correct and revise said assessment roll.

SEC. 22. The collector shall be furnished, within thirty days after the assessment rolls are corrected, with a list of taxes to be collected; and if not paid when demanded, the collector shall have power to collect said taxes with interest and cost by suit in the corporate name, as may be provided by ordinance. The assessment roll shall in all cases be evidence on the part of the corporation.

SEC. 23. To appropriate and provide for the payment of the expenses and debts of the city.

SEC. 24. To make regulations to prevent the introduction of contagious diseases into the city; to make quarantine laws, and enforce the same within the city and around it, not exceeding twelve miles next beyond the boundaries thereof.

SEC. 25. To establish hospitals, and make regulations for the government of the same; to make regulations to secure the general health of the inhabitants; to declare what shall be nuisances, and prevent and remove the same.

Sec. 26. To provide the city with water; to dig wells, lay pump logs and pipes, and erect pumps in the street for the extinguishment of fires, and the convenience of the inhabitants.

Sec. 27. To direct or prohibit the location and management of houses for the storing of gunpowder, tar, pitch, rosin or other combustible and dangerous materials within the city, and to regulate the conveying of gunpowder.

Sec. 28. To exclusively control, regulate, repair, amend and clear the streets, alleys, bridges, sidewalks or crosswalks, and open, widen, straighten or vacate streets and alleys and put drains or ditches and sewers therein, and prevent the incumbering of the streets in any manner and protect the same from any encroachment and injury.

Sec. 29. To provide for the lighting of the streets and erecting lamp posts; to erect market houses and establish markets and market places, and provide for the government and regulation thereof.

Sec. 30. To provide for the erection of all needful buildings for the use of the city, and for enclosing, improving and regulating all public grounds belonging to the city.

Sec. 31. To license, regulate, prohibit or restrain the manufacturers, sellers or vendors of spirituous or fermented liquors, tavern keepers, dram or tippling shop keepers, boarding, victualing or coffee houses, restaurants, saloons or other houses or places for the selling or giving away of wines or other liquors, whether ardent, vinous, or fermented.

Sec. 32. To license, tax, and regulate auctioneers, merchants, retailers, groceries, ordinaries, hawkers, peddlers, brokers, pawnbrokers, and money changers.

Sec. 33. To regulate the selling or giving away of any ardent spirits or other intoxicating liquors by any shopkeeper, grocer or trader, to be drank in any shop, store, grocery, outhouse, yard, garden, or other place within the city, except by persons or at places duly licensed; to forbid the selling or giving away of ardent spirits or other intoxicating liquors to any child, apprentice or servant, without the consent of his or her parent, guardian, master or mistress, or to any Indian.

Sec. 34. To regulate and license or prohibit butchers, and to revoke their license for malconduct in the course of trade; and to regulate, license and restrain the sale of fresh meat and vegetables in the city.

Sec. 35. To license, tax, regulate, suppress or prohibit billiard tables, pin alleys, nine or ten pin alleys or table and ball alleys; to suppress or restrain all disorderly houses and groceries; to authorize the destruction and demolition of all instruments and devices used for the purpose of gaming, and all kinds of gambling; to prevent any riot, noise, disturbance or disorderly assemblage; and to restrain and punish vagrants, mendicants, street beggars and prostitutes.

Sec. 36. To regulate, license, suppress or prohibit all exhibitions of common showmen, shows of every kind, concerts or other musical entertainments, exhibitions of natural or artificial curiosities, caravans, circuses, theatrical performances, ball rooms and all other exhibitions and amusements.

Sec. 37. To license, tax and regulate hacking, carriages, wagons, carts and drays and fix the rates to be charged for the carriage of persons and for wagonage, cartage and drayage of property; as also to license and regulate porters and fix the rates of porterage.

SEC. 38. To provide for the prevention and extinguishment of fires; to regulate the fixing of chimneys and flues thereof and stove pipes, and to organize and establish fire companies.

SEC. 39. To regulate and order parapet walls and other partition fences.

SEC. 40. To establish standard weights and measures and regulate the weights and measures to be used in the city, in all cases not provided for by law.

SEC. 41. To provide for the inspecting and measuring of lumber and other building materials, and for the measurement of all kinds of mechanical work.

SEC. 42. To provide for the inspection and weighing of hay, lime and stone coal, and the measuring of charcoal, firewood and other fuel to be sold or used within the city.

SEC. 43. To provide for and regulate the inspection of tobacco, beef, pork, flour and meal; also beer, whisky and brandy and all other spirituous or fermented liquors.

SEC. 44. To regulate the weight and quality and price of bread sold and used in the city.

SEC. 45. The city council shall have exclusive power within the city, by ordinance, to license, regulate or restrain the keeping of ferries and toll bridges.

SEC. 46. To provide for the taking the enumeration of the inhabitants of the city; to regulate the burial of the dead, and registration of births and deaths; to direct the returning and keeping of bills of mortality and to impose penalties on physicians, sextons, and others for any default in the premises.

SEC. 47. To prevent horse racing, immoderate riding or driving in the streets, and to authorize their being stopped by any person; to punish or prohibit the abuse of animals, to provide for the putting up of posts in front of city lots to fasten their horses and other animals; to compel the fastening of horses, mules, oxen or other animals attached to vehicles, whilst standing or remaining in the streets.

SEC. 48. To prevent the incumbering of the streets or sidewalks, lanes, alleys and public grounds with carriages, tents, wagons, carts, sleighs, horses or other animals, sleds, wheelbarrows, boxes, lumber, timber, firewood, posts, awnings, signs, adobies or any material or substance whatever.

SEC. 49. To restrain, regulate or prohibit the running at large of cattle, horses, mules, sheep, swine, goats and all kinds of poultry; and to authorize the distraining, impounding the same and collecting penalty and cost incurred thereby, and to tax, prevent or regulate the keeping of dogs, and to authorize the destruction of the same, when at large contrary to city ordinance.

SEC. 50. To compel the owner or occupant of any grocery, cellar, tallow chandler shop, soap factory, tannery, stable, barn, privy, sewer or any unwholesome place to cleanse, remove or abate the same from time to time, as oft as may be necessary for the health, comfort and convenience of the inhabitants of said city.

SEC. 51. To direct the location and management of, and regulate breweries and tanneries; and to direct the location, management and construction of and restrain or prohibit within the city distilleries, slaughtering establishments and all establishments or places where nauseous, offensive or unwholesome business may be carried on.

SEC. 52. To prevent any person from bringing, depositing or having within the limits of the city any dead carcass or any unwholesome substance, and to require the removal or destruction of the same by any person who shall have placed or caused to be placed upon or near his premises or near any of the streams of this city any such substance or any putrid or unsound beef, pork or fish, hides or skins of any kind; and, on his default, to authorize the removal or destruction of the same by any officer of said city.

SEC. 53. To direct and regulate the planting and preserving trees in the streets and public grounds, and regulate the fencing of lots within the boundaries of the city.

SEC. 54. To prevent the ringing of bells, the blowing of horns and bugles, the crying of goods and all other noises, performances and devices tending to disturb the peace and quiet of the said city.

SEC. 55. To grant and issue licenses and direct the manner of issuing and registering thereof. Bonds may be taken on the granting of licenses, for the due observance of the ordinances of the city council.

SEC. 56. To require every merchant, retailer, trader and dealer in merchandise or property of every description, which is sold by measure or weight, to cause their weights and measures to be sealed by the city sealer and to be subject to his inspection, the standard of which weights and measures shall be conformable to those established by law.

SEC. 57. The city council shall have power to make such ordinances and resolutions, not contrary to the Constitution and laws of the United States and the laws of the Territory, as may be necessary and expedient to carry into effect the powers vested in the city council or any officer of said city by this act, and enforce observance of all ordinances and resolutions made in pursuance of this act by penalties not exceeding one hundred dollars or imprisonment not to exceed six months, or both.

SEC. 58. The city council shall have exclusive authority and power to establish and regulate the police of the city; to impose fines, forfeitures and penalties for the breach of any ordinances; to provide for the recovery of such fines and forfeitures and the enforcement of such penalties; and to pass, make, ordain, establish and execute all such ordinances, not repugnant to the Constitution and laws of the United States or the laws of this Territory, as they may deem necessary for carrying into effect and execution the powers specified in this act, and for the peace, good order, regulation, convenience and cleanliness of the city, for the protection of property therein from destruction by fire or otherwise, and for the health, safety and happiness of the inhabitants thereof.

SEC. 59. To provide for the punishment of offenders and vagrants by imprisonment in the county or city jail, or by compelling them to labor on the streets or other public works until the same shall be fully paid in all cases where such offenders or vagrants shall fail or refuse to pay the fines and forfeitures which may be awarded against them.

SEC. 60. All ordinances passed by the city council shall, within one months after they shall have been passed, be published in some newspaper printed in said city, or certified copies thereof be posted up in three of the most public places in the city.

SEC. 61. All ordinances of the city may be proven by the seal of the corporation, and, when printed or published in book form, purporting to be printed or published by the authority of the city council, the same shall be received in evidence in all courts or places without further proof.

SEC. 62. When it shall be necessary to take private property for opening, widening or altering any public street, lane, avenue or alley, the corporation shall make a just compensation therefor to the person whose property is so taken; and if the amount of such compensation cannot be agreed upon, the mayor shall cause the same to be ascertained by a jury of six disinterested men, who shall be inhabitants of the city.

SEC. 63. All jurors impaneled to enquire into the amounts of benefit or damages that shall happen to the owners of property so proposed to be taken, shall first be sworn to that effect, and shall return to the mayor or presiding officer of the city council, their inquest in writing, signed by each juror.

SEC. 64. All ordinances, resolutions and regulations now in force in Ogden city, and not inconsistent with this act, shall remain in force until altered, modified or repealed by the city council after this act, shall take effect.

SEC. 65. All actions, rights, fines, penalties and forfeitures, in suit or otherwise, which have accrued under the ordinance incorporating Ogden city, shall be vested in and prosecuted by the corporation hereby created.

SEC. 66. All plots and surveys of lands, lots or other places within said city, heretofore surveyed by the surveyor, and all plots and surveys of lands, lots or other places that may be hereafter surveyed, and all certificates of surveys given by him shall be deemed valid by this act.

SEC. 67. All property, now belonging to Ogden city, is hereby vested in the corporation created by this act; and the officers of said corporation now in office shall respectively continue in the same, until superseded in conformity to the provisions thereof, but shall be governed by this act.

SEC. 68. This act shall not invalidate any act done by the present city council of Ogden city, or by its officers, nor divest their successors under this act of any right, property or otherwise, or liability which may have accrued to or been created by said council prior to the passage of this act.

SEC. 69. All officers of the city, created conservators of the peace by this act, shall have power to arrest or cause to be arrested, with or without process, all persons who shall break the peace; commit for examination, and, if necessary, detain such persons in custody forty-eight hours in the city prison or other safe place; and shall have and exercise such other powers, as conservators of the peace, as the city council may prescribe.

SEC. 70. Nothing in this act shall be so construed as to deprive the present city council of Ogden city of any power or authority conferred upon them by the ordinance incorporating said city, and the act amendatory thereto; but said city council shall possess, exercise and enjoy all the powers and authority heretofore conferred upon them, except so far as such powers and authority have been expressly modified or repealed by this act, until said city council are superseded by the election and qualification of their successors under this act.

SEC. 71. That an ordinance to incorporate Ogden city, approved February 6th, 1851, be and is hereby repealed, and an act in relation to the assessment and collection and expenditure of a tax for road and other purposes within incorporated cities, approved January 4th, 1853, so far as the same applies to Ogden city, and is hereby repealed.

SEC. 72. The city council shall cause to be published in some newspaper published in Ogden city or posted up in three public places, on or before the first day of December in each year, a statement of the amount of the city revenue, specifying in said statement whence derived and for what disbursed.

CHAPTER VI.

KAYSVILLE.

An Act incorporating Kaysville city, in Davis county.

[*Approved February* 13, 1868.]

SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That all that district of country in Davis county embraced in the following boundaries, to wit: Commencing at the south-east corner of the south-west quarter of section one, in township three north, range one west, thence north five miles to the north-east corner of the north-west quarter of section thirteen, township four north, range one west, thence west two and a half miles to the north-west corner of section fifteen, township four north, range one west, thence south-west to the north-west corner of section thirty-one, township four north, range one west United States survey, Salt Lake meridian, thence south about three-fourths of a mile to the shore of Great Salt Lake, thence in a south-easterly direction along the shore of said lake about three miles to the precinct line between Farmington and Kaysville, thence north-easterly along said precinct line to where it intersects with the first sectional line south of the township line between townships three and four north, range one west, thence east to the place of beginning, shall be known and designated under the name and style of Kaysville city; (1) and the inhabitants thereof are hereby constituted a body corporate and politic by the name aforesaid, and may have and use a common seal which they may change and alter at pleasure.

SEC. 2. The inhabitants of said city, by the name and style aforesaid, shall have power to sue and be sued, to plead and be impleaded, defend and be defended in all courts of law and equity and in all actions whatsoever; to purchase, receive and hold property, real and personal, in said city; to purchase, receive and hold real property beyond the city for burying grounds and other public purposes for the use of the inhabitants of said city; to sell, lease, convey or dispose of property, real and personal, for the benefit of said city; to improve and protect such property, and to do all other things in relation thereto as natural persons.

SEC. 3. There shall be a city council, to consist of a mayor and five councilors, who shall have the qualifications of electors of said city, and shall be chosen by the qualified voters thereof, and shall hold their offices for two years, and until their successors shall be elected and qualified. The city council shall judge of the qualifications, elections and returns of their own members, and a majority of them shall form a quorum to do business; but a smaller number may adjourn from day to day and compel the attendance of absent members, under such penalties as may be prescribed by ordinance; there shall also be elected in like manner two justices of the peace, who shall have the qualifications of voters, be commissioned by the governor, and have jurisdiction in all cases arising under the ordinances of the city.

SEC. 4. The mayor and councilors, before entering upon the duties of their offices shall take and subscribe an oath or affirmation that they will support the Constitution of the United States and the laws of this Territory, and that they will well and truly perform all the duties of their offices to the best of their skill and abilities.

SEC. 5. One mayor and five councilors shall be elected biennially, and the first election under this act shall be at such time in said city, as the probate judge of Davis county shall direct: *Provided*, said election shall be on or before the first Monday in August next. Said election shall be held and conducted as now is provided by law for the holding of elections for county and Territorial officers; and, at the said first election, all electors within said city limits, shall be entitled to vote.

SEC. 6. The clerks of election shall leave with each person elected, or at his usual place of residence, within five days after the election, a written notice of his election; and each person so notified shall, within ten days after the election, take the oath or affirmation hereinbefore mentioned, a certificate of which oath shall be deposited with the recorder, whose appointment is hereinafter provided for, and be by him preserved; and all subsequent elections shall be held, conducted and returns thereof made as may be provided for by ordinance of the city council.

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(1) As amended Feb. 16, 1872.

SEC. 7. The city council shall have authority to levy and collect taxes for city purposes upon all taxable property, real and personal, within the limits of the city, not exceeding one-half of one per cent. per annum upon the assessed value thereof; and may enforce the payment of the same, to be provided for by ordinance not repugnant to the Constitution of the United States, or to the laws of this Territory.

SEC. 8. The city council shall have power to appoint a recorder, treasurer, assessor and collector, marshal and supervisor of streets. They shall also have the power to appoint all such other officers, by ordinance, as may be necessary, define the duties of all city officers, and remove them from office at pleasure.

SEC. 9. The city council shall have power to require of all officers, appointed in pursuance of this act, bonds with security, for the faithful performance of their respective duties, and also to require of all officers, appointed as aforesaid, to take an oath for the faithful performance of the duties of their respective offices.

SEC. 10. The city council shall have power and authority to make, ordain, establish and execute all such ordinances, not repugnant to the Constitution of the United States or the laws of this Territory, as they may deem necessary for the peace, benefit, good order, regulation, convenience and cleanliness of said city; for the protection of property therein from destruction by fire or otherwise, and for the health and happiness of the inhabitants thereof; and shall have control of the water and water courses leading to the city: *Provided*, that such control shall not be exercised to the injury of any rights already acquired by actual settlers thereon; and shall have control of the water courses and mill privileges within said city, but in no case shall they interfere with the natural rights of others heretofore acquired in relation to water. They shall have power to fill all vacancies that may happen by death, resignation, removal or otherwise, of any of the officers herein made elective; to fix and establish the fees of the officers of said corporation. The city council shall have power to divide the city into wards, and specify the boundaries thereof.

SEC. 11. All ordinances passed by the city council shall, within ten days after they shall have been passed, be published in some newspaper printed in said city, or certified copies thereof be posted up in three of the most public places in the city. They shall not be in force until thus published or posted up.

SEC. 12. All ordinances of the city may be proven by the seal of corporation affixed thereto; and, when printed or published in book or pamphlet form, purporting to be printed or published by the authority of the corporation, the same shall be received in evidence in all courts and places, without further proof.

SEC. 13. The justices of the peace of said city shall have all the powers of other justices of the peace, both in civil and criminal cases arising under the laws of the Territory. They shall perform the same duties, be governed by the same laws, and give the same bonds and securities as other justices of the peace. They shall have exclusive jurisdiction in all cases arising under the ordinances of the corporation, and shall issue such process as may be necessary to carry such ordinances into execution. Appeals may be had from any decision or judgment of said justices, arising under the ordinances of said city, or the laws of the Territory, in the same manner as appeals are or may be taken from other justices of the peace.

SEC. 14. The mayor shall be the chief executive officer of said corporation; he shall preside in the city council, and shall have power to veto any ordinance when not passed by four-fifths majority, and it shall be his duty to sign all city ordinances.

SEC. 15. The city council shall have power to restrain, regulate or prohibit the running at large of cattle, horses, mules, sheep, swine, goats and all kinds of poultry; and to tax and regulate the keeping of dogs, and to authorize the destruction of the same, when at large contrary to city ordinance.

SEC. 16. To license, regulate, prohibit or restrain the manufacturing, selling or giving away of spirituous, vinous or fermented liquors; [to license and regulate] tavern keepers, dram or tippling shop keepers, boarding, victualing or coffee houses, restaurants, saloons or other houses or places for the selling or giving away of ardent, vinous or fermented liquors.

SEC. 17. The city council shall have exclusive power, by ordinance, to regulate the police of the city; to license, tax and regulate auctioneers, merchants and retailers; to license, tax and regulate theatrical and other exhibitions, shows and amusements; to prohibit and suppress gaming, bawdy and other disorderly houses.

SEC. 18. This act shall be in force on and after the fifteenth day of March, 1868, and may be amended or repealed at the pleasure of the Legislative Assembly.

CHAPTER VII.

OF INCORPORATED CITIES IN UTAH COUNTY.

I. Provo.
II. Alpine.
III. Lehi.
IV. American Fork.
V. Pleasant Grove.
VI. Springville.
VII. Spanish Fork.
VIII. Payson.

I. PROVO.

An Act to incorporate Provo city.

[*Approved January* 21, 1864.]

SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That all that district of country embraced in the following boundaries, in Utah county, to wit: Commencing two miles south from the present survey of the city of Provo, at the edge of Utah Lake, thence east to the mountain, thence northerly with the mountain to the north bank of Provo river, thence west to the said lake, thence southerly along the edge of the lake to the place of beginning shall be known and designated under the name and style of Provo city; and the inhabitants thereof are hereby constituted a body corporate and politic, by the name aforesaid, and shall have perpetual succession, and may have and use a common seal, which they may change and alter at pleasure.

SEC. 2. The inhabitants of said city, by the name and style aforesaid, shall have power to sue and be sued, to plead and be impleaded, defend and be defended in all courts of law and equity; and in all actions whatsoever; to purchase, receive, hold, sell, lease, convey and dispose of property real and personal for the benefit of said city, both within and without its corporate boundaries; to improve and protect such property, and do all other things in relation thereto as natural persons.

SEC. 3. The municipal government of said city is hereby vested in a city council, to be composed of a mayor, three aldermen, one from each ward, and five councilors, who shall have the qualifications of electors in said city, and shall be chosen by the qualified voters thereof, and shall hold their office for two years, and until their successors are elected and qualified.

SEC. 4. An election shall be held on the second Monday in February next, and every two years thereafter, on said day, at which there shall be elected, one mayor, three aldermen and five councilors; and the persons respectively receiving the highest number of votes cast in the city, for said offices, shall be declared elected. When two or more candidates shall have an equal number of votes for the same office, the election shall be determined by the city council.

SEC. 5. The first election under this act shall be conducted in the following manner, to wit: The county clerk of Utah county shall cause notice of the time and place, and the number and kind of officers to be chosen, to be posted up in four public places in said city, at least ten days previous to said election. Two judges shall be selected by the probate judge of Utah county, at least one week previous to the day of election, said judges shall choose two clerks, and the judges and clerks, before entering upon their duties, shall take and subscribe an oath or affirmation for the faithful discharge thereof. The polls shall be open at eight o'clock a. m., and shall close at six o'clock p. m. At the close of the election the judges shall seal up the ballot box and the list of names of the electors and transmit the same, within two days, to the county clerk of Utah county. As soon as the returns are received, the county clerk, in the presence of the probate judge, shall unseal and examine them, and furnish within five days, to each person having the highest number of votes, a certificate of his election. In case of a tie, it shall be decided by lot drawn by the county clerk in presence of the probate judge.

SEC. 6. All subsequent elections held under this act shall be held, conducted and returns thereof made as may be provided for by ordinance of the city council.

SEC. 7. The city council shall be judge of the qualifications, elections and returns of their own members; and a majority of them shall form a quorum to do business, shall determine the rules of their own proceedings and shall meet at such time and place as they may direct; the mayor shall preside when present and have a casting vote; and in the absence of the mayor any alderman present may be appointed to preside over said meeting.

SEC. 8. The city council may hold stated meetings; and special meetings may be called by the mayor or any two aldermen, by notice to each of the members of said council, served personally, or left at their usual place of abode.

SEC. 9. The city council shall have power to appoint a marshal, recorder (who shall be the auditor of public accounts), treasurer, assessor, and collector, supervisor of streets, surveyor, and attorney, a sexton, a sealer of weights and measures and all such other officers as may be necessary; define their duties, remove them from office at pleasure and fix and establish the fees of all officers, jurors and witnesses.

SEC. 10. All officers elected in accordance with the fourth section of this act may be removed for cause from such office by a vote of two-thirds of the city council, and shall be furnished with the charges and have an opportunity to be heard in his defense; and the council shall have power to compel the attendance of witnesses and the production of papers when necessary.

SEC. 11. When a vacancy shall happen by the death, resignation or removal of any officer, such vacancy may be filled by the city council; and every person elected or appointed to any office under this act shall, before he enters upon the duties thereof, take and subscribe an oath or affirmation that he will support the Constitution of the United States, the laws of this Territory and the ordinances of the city, and that he will well and truly perform all the duties of his office to the best of his knowledge and ability, and he may be required to give bonds as shall be prescribed by city ordinances, which oath and bond shall be filed with the city recorder.

SEC. 12. The city council shall have power to divide the city into wards and specify the boundaries thereof; and when necessary create additional wards and add to the number of aldermen and councilors and proportion them among the several wards as may be just and most conducive to the welfare of said city.

SEC. 13. The mayor and aldermen shall be conservators of the peace within the limits of the city, and shall give bonds and qualify as other justices of the peace; and when so qualified shall possess the same powers and jurisdiction, both in civil and criminal cases arising under the laws of the Territory, and may be commissioned, as justices of the peace in and for said city, by the governor. They shall account for and pay over all fines and forfeitures arising under the ordinances of the city into the city treasury, and all fines and forfeitures arising under the laws of the Territory into the county treasury, and shall issue such process as may be necessary to carry into effect all ordinances of said city. Appeals may be had from any decision or judgment of a mayor's or alderman's court in the same manner as, or, may be provided by statute for appeals from justices' courts; and they shall account for and pay over to the city treasurer, within three months, all fines and forfeitures received by them by virtue of their office; and they shall each keep a docket, subject at all times to the inspection of the city council and all other parties interested.

SEC. 14. All process issued by the mayor or an alderman shall be directed to the marshal or other legal officer, and in execution thereof, he shall be governed by such rules and regulations as may be provided by city ordinance.

SEC. 15. It shall be the duty of the recorder to make and keep accurate records of all ordinances made by the city council and all their proceedings in a corporate capacity, which record shall at all times be open to the inspection of the electors of the city and all other parties interested, and audit all accounts of said incorporation. He shall have and keep a plat of all surveys within the city; and he is hereby authorized to take the acknowledgment of deeds, transfers and other instruments of writing, and shall perform such other duties as may be required of him by city ordinance.

SEC. 16. The treasurer shall receive all money or funds belonging to the city, and shall keep an accurate account of all receipts and expenditures in such manner as the city council shall direct. He shall pay all funds that may come to his hand, by virtue of his office, upon orders signed by the auditor of public accounts; and shall report to the city council a true account of his receipts and disbursements, as they may require.

SEC. 17. The city council shall have power, within the city, by ordinance to annually levy and collect taxes on the assessed value of all property in the city made taxable by the laws of the Territory, for the following named purposes, to wit: Not to exceed five mills on the dollar for contingent expenses, nor to exceed five mills on the dollar to open, improve and keep in repair the streets of the city. The city council is further empowered to divide the city into school districts, provide for the election of trustees, appoint a board of school inspectors, annually assess and collect and expend the necessary tax for school purposes and for furnishing the city with water for irrigating and other purposes, and regulate and control the same; and furthermore, so far as may be necessary, control the water courses leading thereto in the immmediate vicinity thereof.

SEC. 18. The city council shall have the management and control of the finances and property of said city.

SEC. 19. To require and it is hereby made the duty of every male resident of the city, over the age of eighteen and under the age of fifty years, to labor not to exceed two days in each year upon the streets; but every person may, at his option, pay one dollar and fifty cents for the day he shall be so bound to labor: *Provided*, it be paid within five days from the time he shall be notified by the street supervisor. In default of payment as aforesaid, the same may be collected as other taxes.

SEC. 20. The council shall have power to borrow money for city purposes, the interest of which shall not exceed one-fourth of the city revenue arising from taxes of the previous year.

SEC. 21. The city council shall have power by ordinance to regulate the form of the assessment rolls. The annual assessment roll shall be returned by the assessor on or before the first Monday of April in each year, but the time may be extended or additions made thereto by order of the city council. On the return thereof, the city council shall fix a day for hearing objections thereto; and any person feeling aggrieved by the assessment of his property may appear at the time specified and make his objections, which shall be heard and determined upon by the city council, and they shall have power to alter, add to, take from and otherwise correct and revise said assessment roll.

SEC. 22. The collector shall be furnished, within thirty days after the assessment rolls are corrected, with a list of taxes to be collected; and if not paid when demanded, the collector shall have power to collect said taxes with interest and cost by suit in the corporate name, as may be provided by ordinance. The assessment roll shall in all cases be evidence on the part of the corporation.

SEC. 23. To appropriate and provide for the payment of the expenses and debts of the city.

SEC. 24. To make regulations to prevent the introduction of contagious diseases into the city; to make quarantine laws and enforce the same within the city and around it, not exceeding twelve miles next beyond the boundaries thereof.

SEC. 25. To establish hospitals and make regulations for the government of the same; to make regulations to secure the general health of the inhabitants; to declare what shall be nuisances and prevent and remove the same.

SEC. 26. To provide the city with water, to dig wells, lay pump logs and pipes, and erect pumps in the streets for the extinguishment of fires and the convenience of the inhabitants.

SEC. 27. To direct or prohibit the location and management of houses for the storing of gunpowder, tar, pitch, rosin or other combustible and dangerous materials within the city, and to regulate the conveying of gunpowder.

SEC. 28. To exclusively control, regulate, repair, amend and clear the streets, alleys, bridges, sidewalks or crosswalks, and open, widen, straighten or vacate streets and alleys and put drains or ditches and sewers therein, and prevent the incumbering of the streets in any manner and protect the same from any encroachment and injury.

SEC. 29. To provide for the lighting of streets and erecting lamp posts; to erect market houses and establish markets and market places, and provide for the government and regulation thereof.

SEC. 30. To provide for the erection of all needful buildings for the use of the city, and for enclosing, improving and regulating all public grounds belonging to the city.

SEC. 31. To license, regulate, prohibit or restrain the manufacturers, sellers or vendors of spirituous or fermented liquors, tavern keepers, dram or tippling shop keepers, boarding, victualing or coffee houses, restaurants, saloons or other houses or places for the selling or giving away of wines or other liquors, whether ardent, vinous or fermented.

SEC. 32. To license, tax and regulate auctioneers, merchants, retailers, grocers, ordinaries, hawkers, peddlers, brokers, pawnbrokers and money changers.

SEC. 33. To regulate the selling or giving away of any ardent spirits or other intoxicating liquors by any shopkeeper, grocer or trader, to be drank in any shop, store, grocery, outhouse, yard, garden or other place within the city, except by persons or at places duly licensed; to forbid the selling or giving away of ardent spirits or other intoxicating liquors to any child, apprentice or servant, without the consent of his or her parent, guardian, master or mistress, or to any Indian.

SEC. 34. To regulate and license or prohibit butchers, and to revoke their license for malconduct in the course of trade; and to regulate, license and restrain the sale of fresh meat and vegetables in the city.

SEC. 35. To license, tax, regulate, suppress or prohibit billiard tables, pin alleys, nine or ten pin alleys or table and ball alleys; to suppress or restrain all disorderly houses and groceries; to authorize the destruction and demolition of all instruments and devices used for the purpose of gaming, and all kinds of gambling; to prevent any riot, noise, disturbance or disorderly assemblage; and to restrain and punish vagrants, mendicants, street beggars and prostitutes.

SEC. 36. To regulate, license, suppress or prohibit all exhibitions of common showmen, shows of every kind, concerts or other musical entertainments, exhibitions of natural or artificial curiosities, caravans, circuses, theatrical performances, ball rooms and all other exhibitions and amusements.

SEC. 37. To license, tax and regulate hacking, carriages, wagons, carts and drays, and fix the rates to be charged for the carrying of persons and for wagonage, cartage and drayage of property, as also to license and regulate porters and fix the rate of porterage.

SEC. 38. To provide for the prevention and extinguishment of fires; to regulate the fixing of chimneys and the flues thereof and stove pipes; and to organize and establish fire companies.

SEC. 39. To regulate and order parapet walls and other partition fences.

SEC. 40. To establish standard weights and measures and to regulate the weights and measures to be used in the city in all cases not provided by law.

SEC. 41. To provide for the inspecting and measuring of lumber and other building materials, and for the measurement of all kinds of mechanical work.

SEC. 42. To provide for the inspection and weighing of hay, lime and stone coal, and the measuring of charcoal, firewood and other fuel to be sold or used within the city.

SEC. 43. To provide for and regulate the inspection of tobacco, beef, pork, flour and meal; also beer, whisky and brandy and all other spirituous or fermented liquors.

SEC. 44. To regulate the weight and quality and price of bread sold and used in the city.

SEC. 45. The city council shall have exclusive power within the city, by ordinance, to license, regulate or restrain the keeping of ferries and toll bridges.

SEC. 46. To provide for the taking the enumeration of the inhabitants of the city; to regulate the burial of the dead and registration of births and deaths; to direct the returning and keeping of bills of mortality;

and to impose penalties on physicians, sextons and others for any default in the premises.

SEC. 47. To prevent horse racing, immoderate riding or driving in the streets, and to authorize their being stopped by any person; to punish or prohibit the abuse of animals, to compel persons to put up posts in front of their lots to fasten their horses and other animals; to compel the fastening of horses, mules, oxen or other animals attached to vehicles, whilst standing or remaining in the streets.

SEC. 48. To prevent the incumbering of the streets or sidewalks, lanes, alleys, and public grounds with carriages, tents, wagons, carts, sleighs, horses or other animals, sleds, wheelbarrows, boxes, lumber, timber, firewood, posts, awnings, signs, adobies or any material or substance whatever.

SEC. 49. To restrain, regulate or prohibit the running at large of cattle, horses, mules, sheep, swine, goats and all kinds of poultry; and to tax, prevent or regulate the keeping of dogs, and to authorize the destruction of the same, when at large contrary to city ordinance.

SEC. 50. To compel the owner or occupant of any grocery, cellar, tallow chandler shop, soap factory, tannery, stable, barn, privy, sewer or any unwholesome place, to cleanse, remove or abate the same from time to time, as oft as may be necessary for the health, comfort and convenience of the inhabitants of said city.

SEC. 51. To direct the location and management of and regulate breweries and tanneries; and to direct the location, management and construction of and restrain or prohibit within the city distilleries, slaughtering establishments and all establishments or places where nauseous, offensive or unwholesome business may be carried on.

SEC. 52. To prevent any person from bringing, depositing or having within the limits of the city any dead carcass or any unwholesome substance, and to require the removal or destruction of the same, by any person who shall have placed or caused to be placed upon or near his premises or near any of the streams of this city any such substance or any putrid or unsound beef, pork or fish, hides or skins of any kind; and, on his default, to authorize the removal or destruction of the same by any officer of said city.

SEC. 53. To direct and regulate the planting and preserving of trees in the streets and public grounds, and regulate the fencing of lots within the boundaries of the city.

SEC. 54. To prevent the ringing of bells, the blowing of horns and bugles, the crying of goods and all other noises, performances and devices tending to disturb the peace and quiet of the said city.

SEC. 55. To grant and issue licenses, and direct the manner of issuing and registering thereof. Bonds may be taken on the granting of licenses, for the due observance of the ordinances of the city council.

SEC. 56. To require every merchant, retailer, trader and dealer in merchandise or property of every description, which is sold by measure or weight, to cause their weights and measures to be sealed by the city sealer and to be subject to his inspection, the standard of which weights and measures shall be conformable to those established by law.

SEC. 57. The city council shall have power to make such ordinances and resolutions, not contrary to the Constitution and laws of the United States and the laws of the Territory, as may be necessary and expedient to carry into effect the powers vested in the city council or any officer of said city by this act, and enforce observance of all ordinances and resolutions made in pursuance of this act by penalties not exceeding one hundred dollars or imprisonment not to exceed six months, or both.

SEC. 58. The city council shall have exclusive authority and power to establish and regulate the police of the city; to impose fines, forfeitures and penalties for the breach of any ordinance; to provide for the recovery of such fines and forfeitures and the enforcement of such penalties, and to pass, make, ordain, establish and execute all such ordinances, not repugnant to the Constitution and laws of the United States or the laws of this Territory, as they may deem necessary for carrying into effect and execution the powers specified in this act, and for the peace, good order, regulation, convenience and cleanliness of the city, for the protection of property therein from destruction by fire or otherwise, and for the health, safety and happiness of the inhabitants thereof.

SEC. 59. To provide for the punishment of offenders and vagrants by imprisonment in the county or city jail, or by compelling them to labor on the streets or other public works until the same shall be fully paid, in all cases where such offenders or vagrants shall fail or refuse to pay the fines and ferfeitures which may be awarded against them.

SEC. 60. All ordinances passed by the city council shall, within one month after they shall have been passed, be published in some newspaper printed in said city, or certified copies thereof be posted up in three of the most public places in the city.

SEC. 61. All ordinances of the city may be proven by the seal of the corporation; and when printed or published in book form, purporting to be printed or published by the authority of the city council, the same shall be received in evidence in all courts or places without further proof.

SEC. 62. When it shall be necessary to take private property for opening, widening, or altering any public street, lane, avenue or alley, the corporation shall make a just compensation therefor to the person whose property is so taken; and if the amount of such compensation cannot be agreed upon, the mayor shall cause the same to be ascertained by a jury of six disinterested men who shall be inhabitants of the city.

SEC. 63. All jurors, impaneled to inquire into the amounts of benefit or damages that shall happen to be owners of property so proposed to be taken, shall first be sworn to that effect, and shall return to the mayor or presiding officer of the city council their inquest in writing, signed by each juror.

SEC. 64. All ordinances, resolutions and regulations now in force in Provo city, and not inconsistent with this act, shall remain in force until altered, modified or repealed by the city council after this act shall take effect.

SEC. 65. All actions, rights, fines, penalties and forfeitures in suit or otherwise, which have accrued under the ordinance incorporating

Provo city, shall be vested in and prosecuted by the corporation hereby created.

SEC. 66. All plots and surveys of lands, lots or other places within said city heretofore surveyed by the surveyor; and all plots and surveys of lands, lots or other places that may be hereafter surveyed and all certificates of surveys given by him shall be deemed valid by this act.

SEC. 67. All property now belonging to Provo city is hereby vested in the corporation created by this act; and the officers of said corporation now in force shall respectively continue in the same, until superseded in conformity to the provisions thereof, but shall be governed by this act.

SEC. 68. This act shall not invalidate any act done by the present city council of Provo city or by its officers, nor divest their successors under this act of any right, property or otherwise, or liability which may have accrued to or been created by said council prior to the passage of this act.

SEC. 69. All officers of the city, created conservators of the peace by this act, shall have power to arrest or cause to be arrested, with or without process, all persons who shall break the peace, commit for examination and, if necessary, detain such persons in custody forty-eight hours in the city prison or other safe place; and shall have and exercise such other powers as conservators of the peace as the city council may prescribe.

SEC. 70. Nothing in this act shall be so construed as to deprive the present city council of Provo city of any power or authority conferred upon them by the ordinance incorporating said city and the act amendatory thereto, but said city council shall possess, exercise and enjoy all the powers and autuority heretofore conferred upon them, except so far as such powers and authority have been expressly modified or repealed by this act, until said city council are superseded by the election and qualification of their successors under this act.

SEC. 71. That an ordinance to incorporate Provo city, approved February 6, 1851, be and is hereby repealed, and an act in relation to the assessment, collection and expenditure of a tax for road and other purposes, within incorporated cities, approved June 4, 1853, so far as the same applies to Provo city, be and is hereby repealed.

SEC. 72. The city council shall cause to be published in some newspaper published in Provo city, or posted up in three public places, on or before the first day of December in each year, a statement of the amount of city revenue, specifying in said statement whence derived and for what disbursed.

II. ALPINE.

An Act to incorporate Alpine city, Utah county.

[*Approved January* 19, 1855.]

SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That all that district of Utah county embraced in the following boundaries, to wit: Beginning at a point one mile east of the centre of Mountainville Fort, thence south one mile, thence west two miles, thence north two miles, thence east two miles, thence south one mile to the place of beginning shall be known and designated as Alpine city; and the inhabitants thereof are hereby constituted a body corporate and politic, by the name aforesaid; and shall have perpetual succession, and may have and use a common seal, which they may change and alter at pleasure.

SEC. 2. The inhabitants of said city, by the name and style aforesaid, shall have power to sue and be sued, to plead and be impleaded, defend and be defended in all courts of law and equity and in all actions whatsoever; to purchase, receive and hold property, real and personal, in said city; to purchase, receive and hold real property beyond the city for burying grounds or other public purposes for the use of the inhabitants of said city; to sell, lease, or dispose of property, real and personal, for the benefit of said city; to improve and protect such property, and to do all other things in relation thereto as natural persons.

SEC. 3. There shall be a city council to consist of a mayor, two aldermen and three councilors, who shall have the qualifications of electors of said city, and shall be chosen by the qualified voters thereof, and shall hold their offices for two years, and until their successors shall be elected and qualified. The city council shall judge of the qualifications, elections and returns of their own members, and a majority of them shall form a quorum to do business; but a smaller number may adjourn from day to day and compel the attendance of absent members, under such penalties as may be prescribed by ordinance.

SEC. 4. The mayor, aldermen and councilors, before entering on the duties of their offices, shall take and subscribe an oath or affirmation that they will support the Constitution of the United States and the laws of this Territory, and that they will well and truly perform all the duties of their offices to best of their skill and abilities.

SEC. 5. An election, for the election of one mayor, two aldermen and three councilors, shall be held on the second Monday of February, eighteen hundred and sixty-three, and every two years thereafter; and shall be held, conducted and returns thereof made in such manner as shall be provided for by the ordinances of the city council.

SEC. 6. All free white male inhabitants who are of the age of eighteen years, who are entitled to vote for Territorial officers and who shall have been actual residents of said city sixty days next preceding said election, shall be entitled to vote for city officers.

SEC. 7. The city council shall have authority annually to assess, collect and expend the necessary tax for roads, streets, schools and other public purposes, and regulate and control the same within the city, and may enforce the payment of said tax by law; and the inhabitants of the city shall be exempt from all other assessments for road and school purposes, except on such property as they may possess outside of the city: *Provided*, that nothing herein shall be so construed as to effect or infringe upon any tax assessed or authorized by any enactment of the governor and Legislative Assembly.

SEC. 8. The city council shall have power to appoint a recorder, treasurer, assessor and collector, marshal and supervisor of streets. They shall also have power to appoint all such other officers, by ordinance, as may be necessary, define the duties of all city officers and remove them from office at pleasure.

SEC. 9. The city council shall have power to require of all officers appointed in pursuance of this act, bonds with penalty and security for the faithful performance of their respective duties, such as may be deemed expedient; and also to require of all officers, appointed as aforesaid, to take an oath for the faithful performance of the duties of their respective offices.

SEC. 10. The city council shall have power and authority to make, ordain, establish and execute all such ordinances, not repugnant to the Constitution of the United States or the laws of this Territory, as they may deem necessary for the peace, benefit, good order, regulation, convenience and cleanliness of the city; for the protection of property therein from destruction by fire or otherwise, and for the health and happiness thereof. They shall have power to fill all vacancies, that may happen by death, resignation or removal, in any of the offices herein made elective; to fix and establish all the fees of the officers of said corporation, not herein established; to impose such fines, not exceeding one hundred dollars for each offense, as they may deem just, for refusing to accept of any office in or under the corporation, or from misconduct therein; to divide the city into wards and specify the boundaries thereof.

SEC. 11. To establish, support and regulate common schools; to borrow money on the credit of the city: *Provided*, that no sum or sums of money be borrowed on a greater interest than six per cent. per annum; nor shall the interest on the aggregate of all the sums borrowed and outstanding ever exceed one-half the city revenue arising from taxes assessed on real estate within the city.

SEC. 12. To make regulations to prevent the introduction of contagious diseases into the city; to make quarantine laws for that purpose and enforce the same.

SEC. 13. To appropriate and provide for the payment of the expenses and debts of the city.

SEC. 14. To establish hospitals and make regulations for the government of the same; to make regulations to secure the general health of the inhabitants; to declare what shall be nuisances and to prevent and remove the same.

SEC. 15. To provide the city with water; to dig wells, lay pump logs and pipes and erect pumps in the streets for the extinguishment of fires and convenience of the inhabitants.

SEC. 16. To open, alter, widen, extend, establish, grade, pave or otherwise improve and keep in repair streets, avenues, lanes and alleys; and to establish, erect and keep in repair aqueducts and bridges.

SEC. 17. To provide for the lighting of the streets and erecting lamp posts; and establish, support and regulate night watches; to erect market houses; establish market and market places and to provide for the government and regulation thereof.

SEC. 18. To provide for erecting all needful buildings for the use of the city, and for inclosing, improving and regulating all public grounds belonging to the city; to regulate and control the live trees and shrubbery, and the water courses, and water privileges in the city, and, so far as may be necessary, the water courses leading thereto in the immediate vicinity thereof.

SEC. 19. To license, tax and regulate auctioneers, merchants and retailers, grocers and taverns, ordinaries, hawkers, peddlers, brokers, pawnbrokers and money changers.

SEC. 20. To license, tax and regulate hacking, carriages, wagons, carts and drays; and fix the rates to be charged for the carriage of persons and for wagonage, cartage and drayage of property; as also to license and regulate porters and fix the rate of porterage.

SEC. 21. To license, tax, and regulate theatricals and other exhibitions, shows and amusements.

SEC. 22. To tax, restrain, prohibit and suppress tippling houses, dram shops, gaming houses, bawdy and other disorderly houses.

SEC. 23. To provide for the prevention and extinguishment of fires; to regulate the fixing of chimneys and the flues thereof and stove pipes, and to organize and establish fire companies.

SEC. 24. To regulate the storage of gunpowder, tar, pitch, resin and other combustible materials.

SEC. 25. To regulate and order parapet walls and other partition fences; to wall in the city or any part thereof; to restrain, regulate or prohibit the running at large of cattle, horses, mules, sheep, swine, goats and all kinds of poultry; and to tax and regulate the keeping of dogs, and to authorize the destruction of the same when at large contrary to city ordinances.

SEC. 26. To establish standard weights and measures, and regulate the weights and measures to be used in the city, in all cases not provided for by law.

SEC. 27. To provide for the inspecting and measuring of lumber and other building materials; and for the measurement of all kinds of mechanical work.

SEC. 28. To provide for the inspection and weighing of hay, lime, pit coal, and measuring of charcoal, firewood and other fuel to be sold or used within the city.

SEC. 29. To license, regulate, prohibit or restrain the manufacturing, selling or giving away of spirituous, vinous or fermented liquors, [license and regulate] tavern keepers, dram or tippling shop keepers, boarding, victualing or coffee houses, restaurants, saloons or other houses or places for the selling or giving away of ardent, vinous or fermented liquors; to provide for and regulate the inspection of tobacco and of beef, pork, flour and meal; also beer and whisky, brandy and all other spirituous and fermented liquors.

SEC. 30. To regulate the weights, quality and price of bread sold and used in the city.

SEC. 31. To provide for taking the enumeration of the inhabitants of the city.

SEC. 32. To fix the compensation of all city officers, and regulate the fees of jurors, witnesses and others for services rendered under this act or any city ordinance.

SEC. 33. The city council shall have exclusive power within the city, by ordinance, to license, regulate, suppress or restrain billiard-tables and from one to twenty pin alleys and every other description of gaming or gambling.

SEC. 34. The city council shall have exclusive power within the city, by ordinance, to regulate the police of the city; to impose fines, forfeitures and penalties for the breach of any ordinance, and provide for the recovery of such fines and forfeitures and the enforcement of such penalties; and to pass such ordinances as may be necessary and proper to carry into effect and execution the powers specified in this act: *Provided*, that such ordinances are not repugnant to the Constitution of the United States or the laws of this Territory.

SEC. 35. All ordinances passed by the city council shall, within one month after they shall have been passed, be published in some newspaper printed in the city, or certified copies thereof be posted up in three of the most public places in the city.

SEC. 36. All ordinances of the city may be proven by the seal of the corporation; and when published in book or pamphlet form, purporting to be printed or published by the authority of the corporation, the same shall be received in evidence in all courts or places, without further proof.

SEC. 37. The mayor and aldermen shall be conservators of the peace within the limits of the city, and shall have all the powers of justices of the peace therein, both in civil and criminal cases arising under the laws of the Territory. They shall, as justices of the peace, within the limits of the city, perform the same duties, be governed by the same laws, give the same bonds and securities as other justices of the peace, and be commissioned, as justices of the peace in and for said city, by the governor.

SEC. 38. The mayor and aldermen shall have jurisdiction in all cases arising under the ordinances of the corporation, and shall issue such process as may be necessary to carry said ordinances into execution and effect. Appeals may be had from any decision or judgment of said mayor or aldermen, arising under the ordinances of said city, in the same manner as appeals are taken from justices of the peace.

SEC. 39. The city council may sit at such times and places as may be prescribed by city ordinance; special meetings of which may at any time be called by the mayor or any two aldermen.

SEC. 40. All process issued by the mayor or aldermen shall be directed to the marshal, and in the execution thereof he shall be governed by the same laws as are or may be prescribed for the direction and compensation of constables in similar cases. The marshal shall also perform such other duties as may be required of him under the ordinances of said city, and shall be the principal ministerial officer.

SEC. 41. It shall be the duty of the recorder, to make and keep accurate records of all ordinances made by the city council and of all their proceedings in their corporate capacity, which record shall at all times be open to the inspection of the electors of said city, and he shall perform such other duties as may be required of him by the ordinances of the city council.

SEC. 42. When it shall be necessary to take private property for opening, widening, or altering any public street, lane, avenue or alley, the corporation shall make a just compensation therefor to the person whose property is so taken; and if the amount of such compensation cannot be agreed upon, the mayor shall cause the same to be ascertained by a jury of six disinterested men, who shall be inhabitants of the city.

SEC. 43. All jurors, impaneled to inquire into the amount of benefits or damages that shall happen to the owners of property so proposed to be taken, shall first be sworn to that effect, and shall return to the mayor their inquest in writing, signed by each juror.

SEC. 44. In case the mayor shall, at any time, be guilty of any palpable omission of duty, or shall willfully and corruptly be guilty of oppression, malconduct or partiality in the discharge of the duties of his office, he shall be liable to indictment, and, on conviction, he shall be liable to fine and imprisonment; and the court shall have power, on the recommend of the jury, to add to the judgment of the court that he be removed from office.

SEC. 45. The city council shall have power to provide for the punishment of offenders and vagrants by imprisonment in the county or city jail, or by compelling them to labor upon the streets or other public works until the same shall be fully paid, in all cases where such offenders or vagrants shall fail or refuse to pay the fines and forfeitures which may be awarded against them.

SEC. 46. (1)

III. LEHI.

An Act to incorporate the city of Lehi.

[*Approved February* 5, 1852.]

SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That all that portion of the country lying on Dry creek, in Utah county, bounded as follows, to wit: Commencing at the Utah lake direct south of the south-east corner of the plat of Evansville and running direct to said corner, from thence north three miles, from thence west to the river Jordan, from thence up the river Jordan to the outlet of the lake, from thence up the lake to the place of beginning is hereby incorporated into a city which shall be called "the city of Lehi;" and the inhabitants thereof are hereby constituted a body corporate and politic by the name aforesaid; and shall have perpetual succession, and may have and use a common seal, which they may change and alter at pleasure.

SEC. 2. The inhabitants of said city, by the name and style aforesaid, shall have power to sue and be sued, to plead and be impleaded, defend and be defended in all courts of law and equity and in all actions whatsoever, to purchase, receive and hold property, real and personal, in said city to purchase, receive and hold real property beyond the city for burying grounds or other public purposes for the use of the inhabitants of said city; to sell, lease, convey or dispose of property, real and personal, for the benefit of said city; to improve and protect such property, and to do all other things in relation thereto, as natural persons.

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(1) Repealed Jan. 15, 1862.

SEC. 3. There shall be a city council to consist of a mayor, two aldermen and three councilors, who shall have the qualifications of electors of said city, and shall be chosen by the qualified voters thereof, and shall hold their offices for two years, and until their successors shall be elected and qualified. The city council shall judge of the qualifications, elections and returns of their own members, and a majority of them shall form a quorum to do business; but a smaller number may adjourn from day to day and compel the attendance of absent members under such penalties as may be prescribed by ordinance.

SEC. 4. The mayor, aldermen and councilors, before entering upon the duties of their offices, shall take and subscribe an oath or affirmation that they will support the Constitution of the United States and the laws of this Territory, and that they will well and truly perform all the duties of their offices to the best of their skill and abilities.

SEC. 5. An election, for the election of one mayor, two aldermen and three councilors, shall be held on the second Monday of February, 1863, and every two years thereafter; and shall be held, conducted and returns thereof made in such manner as shall be provided for by the ordinances of the city council.

SEC. 6. All inhabitants who are of the age of twenty-one years, who are entitled to vote for Territorial officers and who shall have been actual residents of said city sixty days next preceding said election, shall be entitled to vote for city officers.

SEC. 7. The city council shall have authority to levy and collect taxes, for city purposes, upon all taxable property, real and personal, within the limits of the city, not exceeding one-half [of one] per cent. per annum upon the assessed value thereof; and may enforce the payment of the same, in any manner to be provided by ordinance not repugnant to the Constitution of the United States or the laws of this Territory.

SEC. 8. The city council shall have power to appoint a recorder, treasurer, assessor and collector, marshal and supervisor of streets. They shall also have power to appoint all such officers, by ordinance, as may be necessary, define the duties of all city officers and remove them from office at pleasure.

SEC. 9. The city council shall have power to require of all officers, appointed in pursuance of this act, bonds with penalty and security for the faithful performance of their respective duties; such as may be deemed expedient; and also to require of all officers, appointed as aforesaid, to take an oath for the faithful performance of the duties of their respective offices.

SEC. 10. The city council shall have power and authority to make, ordain, establish and execute all such ordinances, not repugnant to the Constitution of the United States or the laws of this Territory, as they may deem necessary for the peace, benefit, good order, regulation, convenience and cleanliness of said city; for the protection of property therein from destruction by fire or otherwise, and for the health and happiness thereof. They shall have power to fill all vacancies, that may happen by death, resignation, removal, in any of the offices herein made elective; to fix and establish all the fees of the officers of said corporation, not herein established; to impose such fines, not exceeding one hundred dollars for each offense, as they may deem just, for refusing to accept of any office in or under the corporation, or from misconduct therein; to divide the city into wards and specify the boundaries thereof.

SEC. 11. To establish, support and regulate common schools; to borrow money on the credit of the city: *Provided*, that no sum or sums of money be borrowed on a greater interest than six per cent. per annum; nor shall the interest on the aggregate of all the sums borrowed and outstanding ever exceed one-half of the city revenue arising from taxes assessed on real estate within this corporation.

SEC. 12. To make regulations to prevent the introduction of contagious diseases into the city; to make quarantine laws for that purpose and enforce the same.

SEC. 13. To appropriate and provide for the payment of the expenses and debts of the city.

SEC. 14. To establish hospitals and make regulations for the government of the same; to make regulations to secure the general health of the inhabitants; to declare what shall be nuisances and to prevent and remove the same.

SEC. 15. To provide the city with water; to dig wells, lay pump logs and pipes and erect pumps in the streets for the extinguishment of fires and convenience of the inhabitants.

SEC. 16. To open, alter, widen, extend, establish, grade, pave or otherwise improve and keep in repair streets, avenues, lanes and alleys; and to establish, erect and keep in repair aqueducts and bridges.

SEC. 17. To provide for the lighting of the streets and erecting lamp posts; and establish, support and regulate night watches; to erect market houses; establish market and market places and to provide for the government and regulation thereof.

SEC. 18. To provide for erecting all needful buildings for the use of the city, and for enclosing, improving and regulating all public grounds belonging to the city.

SEC. 19. To license, tax and regulate auctioneers, merchants and retailers, grocers and taverns, ordinaries, hawkers, peddlers, brokers, pawnbrokers and money changers.

SEC. 20. To license, tax and regulate hacking, carriages, wagons, carts and drays; and fix the rates to be charged for the carriage of persons and for wagonage, cartage and drayage of property; as also to license and regulate porters and fix the rate of porterage.

SEC. 21. To license, tax, and regulate theatricals and other exhibitions, shows and amusements.

SEC. 22. To tax, restrain, prohibit and suppress tippling houses, dram shops, gaming houses, bawdy and other disorderly houses.

SEC. 23. To provide for the prevention and extinguishment of fires; to regulate the fixing of chimneys and the flues thereof and stove pipes, and to organize and establish fire companies.

SEC. 24. To regulate the storage of gunpowder, tar, pitch, rosin and other combustible materials.

SEC. 25. To regulate and order parapet walls and other partition fences; to restrain, regulate and prohibit the running at large of cattle, horses, mules, sheep, swine, goats and all kinds of poultry; and to tax and regulate the keeping of dogs, and to authorize the destruction of the same when at large contrary to city ordinances.

SEC. 26. To establish standard weights and measures, and regulate the weights and measures to be used in the city, in all cases not provided for by law.

SEC. 27. To provide for the inspection and measuring of lumber and other building materials; and for the measurement of all kinds of mechanical work.

SEC. 28. To provide for the inspection and weighing of hay, lime and stone coal, and the measuring of charcoal, firewood and other fuel to be sold or used within the city.

SEC. 29. To license, regulate, prohibit or restrain the manufacturing, selling or giving away of spirituous, vinous or fermented liquors, [to license and regulate] tavern keepers, dram or tippling shop keepers, boarding, victualing or coffee houses, restaurants, saloons or other houses or places for the selling or giving away of ardent, vinous or fermented liquors; to provide for and regulate the inspection of tobacco, beef, pork, flour and meal; also beer, whisky, brandy and other spirituous or fermented liquors.

SEC. 30. To regulate the weight, quality and price of bread sold and used in the city.

SEC. 31. To provide for taking the enumeration of the inhabitants of the city.

SEC. 32. To fix the compensation of all city officers, and regulate the fees of jurors, witnesses and others for services rendered under this or any city ordinance.

SEC. 33. The city council shall have exclusive power within the city, by ordinance, to license, regulate, suppress or restrain billiard tables and from one to twenty pin alleys and every other description of gaming or gambling.

SEC. 34. The city council shall have exclusive power within the city, by ordinance, to license, regulate or restrain the keeping of ferries and toll bridges; to regulate the police of the city; to impose fines, forfeitures and penalties for the breach of any ordinance, and provide for the recovery of such fines and forfeitures and the enforcement of such penalties; and to pass such ordinances as may be necessary and proper for carrying into effect and execution the powers specified in this act: *Provided*, such ordinances are not repugnant to the Constitution of the United States or the laws of this Territory.

SEC. 35. All ordinances passed by the city council shall, within one month after they shall have been passed, be published in some newspaper printed in said city, or certified copies thereof be posted up in three of the most public places in the city.

SEC. 36. All ordinances of the city may be proven by the seal of the corporation; and when printed or published in book or pamphlet form, purporting to be printed or published by authority of the corporation, the same shall be received in evidence in all courts and places, without further proof.

SEC. 37. The mayor and aldermen shall be conservators of the peace within the limits of the city, and shall have all the powers of justices of the peace therein, both in civil and criminal cases arising under the laws of the Territory. They shall, as justices of the peace, within the limits of said city, perform the same duties, be governed by the same laws, and give the same bonds and securities as other justices of the peace, and be commissioned, as other justices of the peace in and for said city, by the governor.

SEC. 38. The mayor and aldermen shall have exclusive jurisdiction in all cases arising under the ordinances of the corporation, and shall issue such process as may be necessary to carry said ordinances into execution and effect. Appeals may be had from any decision or judgment of said mayor or aldermen, arising under the ordinances of said city, in the same manner as appeals are taken from justices of the peace.

SEC. 39. The city council may sit at such times and places as may be prescribed by city ordinance; special meetings of which may at any time be called by the mayor or any two aldermen.

SEC. 40. All process issued by the mayor or aldermen shall be directed to the marshal, and in the execution thereof he shall be governed by the same laws as are or may be prescribed for the direction and compensation of constables in similar cases. The marshal shall also perform such other duties as may be required of him under the ordinances of said city, and shall be the principal ministerial officer.

SEC. 41. It shall be the duty of the recorder, to make and keep accurate records of all ordinances made by the city council and of all their proceedings in their corporate capacity, which record shall at all times be open to the inspection of the electors of said city, and shall perform all other duties as may be required of him by the ordinances of the city council.

SEC. 42. When it shall be necessary to take private property for opening, widening, or altering any public street, lane, avenue or alley, the corporation shall make a just compensation therefor to the person whose property is so taken; and if the amount of such compensation cannot be agreed upon, the mayor shall cause the same to be ascertained by a jury of six disinterested men, who shall be inhabitants of the city.

SEC. 43. All jurors, impaneled to inquire into the amount of benefits or damages that shall happen to the owners of property so proposed to be taken, shall first be sworn to that effect, and shall return to the mayor their inquest in writing, signed by each juror.

SEC. 44. In case the mayor shall, at any time, be guilty of a palpable omission of duty, or shall willfully and corruptly be guilty of oppression, malconduct or partiality in the discharge of the duties of his office, he shall be liable to indictment, and, on conviction, he shall be liable to fine and imprisonment; and the court shall have power, on the recommend of the jury, to add to the judgment of the court that he be removed from office.

Sec. 45. The city council shall have power to provide for the punishment of offenders and vagrants by imprisonment in the county or city jail, or by compelling them to labor upon the streets or other public works until the same shall be fully paid, in all cases where such offenders or vagrants shall fail or refuse to pay the fines and forfeitures which may be recovered against them.

Sec. 46. (1)

IV. AMERICAN FORK.

An Act to incorporate American Fork city, Utah county.

[*Approved June 4th,* 1853.]

Sec. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That all that district of Utah county embraced in the following boundaries, to wit: Beginning at a point one mile east of the south-east corner of the public square of the present town plot on the American Fork, thence north to the south-east bank of American Fork creek, thence north-easterly along the bank of said creek to the mouth of the cañon, thence west to the north-east corner of Lehi city incorporation, thence south to Utah lake, thence easterly and southerly along the shore of said lake to a point directly south of the place of beginning, thence north to the place of beginning, shall be known and designated as American Fork city; and the inhabitants thereof are hereby constituted a body corporate and politic by the name aforesaid, and shall have perpetual succession, and may have and use a common seal, which they may change and alter at pleasure.

Sec. 2. The inhabitants of said city, by the name and style aforesaid, shall have power to sue and be sued, to plead and be impleaded, to defend and be defended in all courts of law and equity and in all actions whatsoever; to purchase, receive and hold property, real and personal, in said city, and to purchase, receive and hold real property beyond the city for burying grounds or other public purposes for the use of the inhabitants of said city; to sell, lease, convey or dispose of property, real and personal, for the benefit of said city; to improve and protect such property, and to do all other things in relation thereto, as natural persons.

Sec. 3. There shall be a city council to consist of a mayor, two aldermen and three councilors, who shall have the qualifications of electors of said city, and shall be chosen by the qualified voters thereof, and shall hold their office for two years, and until their successors shall be elected and qualified. The city council shall judge of the qualifications, elections and returns of their own members, and a majority of them shall form a quorum to do business; but a smaller number may adjourn from day to day, and compel the attendance of absent members, under such penalties as may be prescribed by ordinance.

Sec. 4. The mayor, aldermen and councilors, before entering upon the duties of their offices, shall take and subscribe an oath or affirmation that they will support the Constitution of the United States and the laws of this Territory, and that they will well and truly perform the duties of their offices to the best of their skill and ability.

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(1) Repealed Jan. 15, 1862.

SEC. 5. An election, for the election of one mayor, two aldermen and three councilors, shall be held on the second Monday of February, 1863; and every two years thereafter, and shall be held, conducted and returns thereof made in such manner as shall be provided for by the ordinances of the city council.

SEC. 6. All inhabitants who are of the age of eighteen [twenty-one] years, who are entitled to vote for Territorial officers, and who shall have been actual residents of said city sixty days next preceding said election, shall be entitled to vote for city officers.

SEC. 7. The city council shall have authority annually to assess, collect and expend the necessary tax for roads, streets, schools and other public purposes, and regulate and control the same within the city, and may enforce the payment of said tax by law; and the inhabitants of the city shall be exempt from all other assessments for road and school purposes, except on such property as they may possess outside of the city: *Provided,* that nothing herein shall be so construed as to effect, or infringe upon any tax assessed or authorized by any enactment of the governor and Legislative Assembly.

SEC. 8. The city council shall have power to appoint a recorder, treasurer, assessor and collector, marshal and supervisor of streets. They shall also have power to appoint all such other officers by ordinance, as may be necessary, define the duties of the city officers, and remove them from office at pleasure.

SEC. 9. The city council shall have power to require of all officers, appointed in pursuance of this act, bonds with penalty and security, for the faithful performance of their respective duties, such as may be deemed expedient; and also to require all officers, appointed as aforesaid, to take an oath for the faithful performance of the duties of their respective offices.

SEC. 10. The city council shall have power and authority to make, ordain, establish and execute all such ordinances, not repugnant to the Constitution of the United States or the laws of this Territory as they may deem necessary for the peace, benefit, good order, regulation, convenience and cleanliness of said city, for the protection of property therein, from destruction by fire or otherwise, and for the health and happiness thereof. They shall have power to fill all vacancies that may happen, by death, resignation or removal, in any of the offices herein made elective; to fix and establish all the fees of the officers of said corporation, not herein established; to impose such fines, not exceeding one hundred dollars for each offense, as they may deem just, for refusing to accept of any office in or under the corporation, or for misconduct therein; to divide the city into wards and specify the boundaries thereof.

SEC. 11. To establish, support and regulate common schools; to borrow money on the credit of the city: *Provided*, that no sum or sums of money be borrowed on a greater interest than six per cent. per annum, nor shall the interest on the aggregate of all the sums borrowed and outstanding ever exceed one-half of the city revenue arising from taxes assessed on real estate within this corporation.

SEC. 12. To make regulations to prevent the introduction of contagious diseases into the city; to make quarantine laws for that purpose and enforce the same.

SEC. 13. To appropriate and provide for the payment of expenses and debts of the city.

SEC. 14. To establish hospitals and make regulations for the government of the same; to make regulations to secure the general health of the inhabitants; to declare what shall be nuisances and to prevent and remove the same.

SEC. 15. To provide the city with water; to dig wells, lay pump logs and pipes and erect pumps in the streets for the extinguishment of fires and convenience of the inhabitants; to control the water courses and mill sites in said city, and the water courses leading thereto in the immediate vicinity thereof.

SEC. 16. To open, widen, alter, extend, establish, grade, pave or otherwise improve and keep in repair, streets, avenues, lanes and alleys; and to establish, erect and keep in repair aqueducts and bridges.

SEC. 17. To provide for the lighting of the street and erecting lamp posts; and establish, support and regulate night watches, to erect market houses, establish markets and market places and provide for the government and regulation thereof.

SEC. 18. To provide for erecting all needful buildings for the use of the city, and for enclosing, improving and regulating all public grounds belonging to the city.

SEC. 19. To license, tax, and regulate auctioneers, merchants and retailers, grocers and taverns, ordinaries, hawkers, peddlers, brokers, pawnbrokers and money changers.

SEC. 20. To license, tax and regulate hacking, carriages, wagons, carts and drays, and fix the rates to be charged for the carriage of persons and for wagonage, cartage, and drayage of property; as also to license and regulate porters and fix the rates of porterage.

SEC. 21. To license, tax and regulate theatricals and other exhibitions, shows and amusements.

SEC. 22. To tax, restrain, prohibit and suppress tippling houses, dram shops, gaming houses, bawdy and other disorderly houses.

SEC. 23. To provide for the prevention and extinguishment of fires; to regulate the fixing of chimneys and the flues thereof and stove pipes, and to organize and establish fire companies.

SEC. 24. To regulate the storage of gunpowder, tar, pitch, rosin and other combustible materials.

SEC. 25. To regulate and order parapet walls and other partition fences; to restrain, regulate or prohibit the running at large of cattle, horses, mules, sheep, swine, goats and all kinds of poultry; and to tax and regulate the keeping of dogs and to authorize the destruction of the same, when at large contrary to city ordinances.

SEC. 26. To establish standard weights and measures and regulate the weights and measures to be used in the city, in all cases not provided for by law.

SEC. 27. To provide for the inspection and measuring of lumber and other building materials, and for the measurement of all kinds of mechanical work.

SEC. 28. To provide for the inspection and weighing of hay, lime and stone coal, and measuring of charcoal, firewood and other fuel to be sold or used within the city.

SEC. 29. To license, regulate, prohibit or restrain the manufacturing, selling or giving away of spirituous, vinous or fermented liquors, [to license and regulate] tavern keepers, dram or tippling shop keepers, boarding, victualing or coffee houses, restaurants, saloons or other houses or places for the selling or giving away of ardent, vinous or fermented liquors; to provide for and regulate the inspection of tobacco, beef, pork, flour and meal; also beer, whisky, brandy and all other spirituous or fermented liquors.

SEC. 30. To regulate the weight, quality and price of bread sold and used in the city.

SEC. 31. To provide for taking the enumeration of the inhabitants of the city.

SEC. 32. To fix the compensation of all city officers, and regulate the fees of jurors, witnesses and others for services rendered under this or any city ordinance.

SEC. 33. The city council shall have exclusive power within the city, by ordinance, to license, regulate, suppress or restrain billiard tables, and from one to twenty pin alleys and every other description of gaming or gambling.

SEC. 34. The city council shall have exclusive power within the city, by ordinance, to regulate the police of the city; to impose fines, forfeitures and penalties for the breach of any ordinance, and provide for the recovery of such fines and forfeitures, and the enforcement of such penalties; and to pass such ordinances as may be necessary and proper to carry into effect and execution the powers specified in this act: *Provided*, such ordinances are not repugnant to the Constitution of the United States or the laws of this Territory.

SEC. 35. All ordinances passed by the city council shall, within one month after they shall have been passed, be published in some newspaper, printed in said city, or certified copies thereof be posted up in three of the most public places in the city.

SEC. 36. All ordinances of the city may be proven by the seal of the corporation; and when published in book or pamphlet form, purporting to be printed or published by the authority of the corporation, the same shall be received in evidence in all courts or places without further proof.

SEC. 37. The mayor and aldermen shall be conservators of the peace within the limits of the city, and shall have all the powers of justices of the peace therein, both in civil and criminal cases arising under the laws of the Terrritory. They shall, as justices of the peace, within the limits of said city, perform the same duties, be governed by the same laws, give the same bonds and securities as other justices of the peace, and be commissioned, as justices of the peace in and for said city, by the governor.

SEC. 38. The mayor and aldermen shall have jurisdiction in all cases arising under the ordinances of the corporation, and shall issue such process as may be necessary to carry said ordinances into execution and effect. Appeals may be had from any decision or judgment of said mayor or aldermen, arising under the ordinances of said city, in the same manner as appeals are taken from justices of the peace.

SEC. 39. The city council may sit at such times and places as may be prescribed by city ordinance; special meetings of which may at any time be called by the mayor or any two aldermen.

SEC. 40. All process issued by the mayor or aldermen shall be directed to the marshal, and in the execution thereof, he shall be governed by the same laws as are or may be prescribed for the direction and compensation of constables in similar cases. The marshal shall also perform such other duties as may be required of him under the ordinances of said city, and shall be the principal ministerial officer.

SEC. 41. It shall be the duty of the recorder to make and keep accurate records of all ordinances made by the city council and of all their proceedings in their corporate capacity, which record shall at all times be open to the inspection of the electors of said city, and he shall perform all other duties as may be required of him by the ordinances of the city council.

SEC. 42. When it shall be necessary to take private property for opening, widening or altering any public street, lane, avenue or alley, the corporation shall make a just compensation therefor to the person whose property is so taken; and if the amount of such compensation cannot be agreed upon, the mayor shall cause the same to be ascertained by a jury of six disinterested men, who shall be inhabitants of the city.

SEC. 43. All jurors, impaneled to inquire into the amount of benefits or damages that shall happen to the owners of property so proposed to be taken, shall first be sworn to that effect, and shall return to the mayor their inquest in writing, signed by each juror.

SEC. 44. In case the mayor shall, at any time, be guilty of a palpable omission of duty, or shall willfully and corruptly be guilty of oppression, malconduct or partiality in the discharge of the duties of his office, he shall be liable to indictment; and, on conviction, he shall be liable to fine and imprisonment, and the court shall have power, on the recommend of the jury, to add to the judgment of the court that he be removed from office.

SEC. 45. The city council shall have power to provide for the punishment of offenders and vagrants by imprisonment in the county or city jail, or by compelling them to labor on the streets or other public works until the same shall be fully paid, in all cases where such offenders or vagrants shall fail or refuse to pay the fines and forfeitures which may be awarded against them.

SEC. 46. (1)

V. PLEASANT GROVE.

An Act to incorporate Pleasant Grove city;

[*Approved January* 19, 1855.]

SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That all that district of Utah county embraced in the following boundaries, to wit: Beginning at the south-east corner of Lake city incorporation, running in a southerly direction along the lake shore to the north-west corner of the corporation of Provo city, thence east to the base of the mountain, thence along the base of the mountain to the south bank of the American creek near the mouth of the cañon; thence down the south bank of said creek to a point directly north of the north-east corner of Lake city corporation, thence south to the place of beginning shall be known and designated as Pleasant Grove city; and the inhabitants thereof are hereby constituted a body corporate and politic, by the name aforesaid; and shall have perpetual succession, and may have and use a common seal, which they may change and alter at pleasure.

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(1) Repealed Jan. 15, 1862.

SEC. 2. The inhabitants of said city, by the name and style aforesaid, shall have power to sue and be sued, to plead and be impleaded, defend and be defended, in all courts of law and equity, and in all actions whatsoever; to purchase, receive and hold property, real and personal, in said city; to purchase, receive and hold real property beyond the city for burying grounds or other public purposes for the use of the inhabitants of said city; to sell, lease, convey or dispose of property, real and personal, for the benefit of said city; to improve and protect such property, and to do all other things in relation thereto, as natural persons.

SEC. 3. There shall be a city council, to consist of a mayor, two aldermen, and three councilors, who shall have the qualifications of electors of said city, and shall be chosen by the qualified voters thereof, and shall hold their offices for two years, and until their successors be elected and qualified. The city council shall judge of the qualifications, elections and returns of their own members, and a majority of them shall form a quorum to do business; but a smaller number may adjourn from day to day and compel the attendance of absent members, under such penalties as may be prescribed by ordinance.

SEC. 4. The mayor, aldermen and councilors, before entering upon the duties of their offices, shall take and subscribe an oath or affirmation that they will support the Constitution of the United States and the laws of this Territory, and that they will well and truly perform the duties of their offices to the best of their skill and abilities.

SEC. 5. An election, for the election of one mayor, two aldermen and three councilors, shall be held on the second Monday of February, 1863, and every two years thereafter, and shall be held, conducted and the returns thereof made in such manner as shall be provided for by the ordinances of the city council.

SEC. 6. All inhabitants of the age of eighteen [twenty-one] years, who are entitled to vote for Territorial officers, and who shall have been actual residents of said city sixty days next preceding said election, shall be entitled to vote for city officers.

SEC. 7. The city council shall have authority annually to assess, collect and expend the necessary tax for roads, streets, schools and other public purposes, and regulate and control the same within the city, and may enforce the payment of said tax by law; and the inhabitants of the city shall be exempt from all other assessments for road and school purposes, except on such property as they may possess outside of the city; *Provided*, that nothing herein shall be so construed as to affect or infringe upon any tax assessed or authorized by any enactment of the governor and Legislative Assembly.

SEC. 8. The city council shall have power to appoint a recorder, treasurer, assessor and collector, marshal and supervisor of streets. They shall also have the power to appoint all such other officers, by ordinance, as may be necessary, define the duties of all city officers, and remove them from office at pleasure.

SEC. 9. The city council shall have power to require of all officers, appointed in pursuance of this act, bonds with penalty and security, for the faithful performance of their respective duties, such as may be deemed expedient, and also to require of all officers, appointed as aforesaid, to take an oath for the faithful performance of the duties of their respective offices.

SEC. 10. The city council shall have power and authority to make, ordain, establish and execute all such ordinances not repugnant to the Constitution of the United States or the laws of this Territory, as they may deem necessary for the peace, benefit, good order, regulation, convenience and cleanliness of the city, for the protection of property therein from destruction by fire or otherwise; and for the health and happiness thereof. They shall have power to fill all vacancies, that may happen by death, resignation or removal, in any of the offices herein made elective; to fix and establish all the fees of the officers of said corporation, not herein established; to impose such fines, not exceeding one hundred dollars for each offense, as they may deem just, for refusing to accept any office in or under the corporation, or for misconduct therein; to divide the city into wards and specify the boundaries thereof.

SEC. 11. To establish, support and regulate common shools; to borrow money on the credit of the city: *Provided*, that no sum or sums of money be borrowed on a greater interest than six per cent. per annum; nor shall the interest on the aggregate of all the sums borrowed and outstanding ever exceeding one-half of the city revenue arising from taxes assessed on real estate, within the city.

SEC. 12. To make regulations to prevent the introduction of contagious diseases into the city; to make quarantine laws for that purpose and enforce the same.

SEC. 13. To appropriate and provide for the payment of the expenses and debts of the city.

SEC. 14. To establish hospitals and make regulations for the government of the same; to make regulations to secure the general health of the inhabitants; to declare what shall be nuisances and to prevent and remove the same.

SEC. 15. To provide the city with water, to dig wells, lay pump logs and pipes, and erect pumps in the street for the extinguishment of fires and convenience of the inhabitants.

SEC. 16. To open, alter, widen, extend, establish, grade, pave, or otherwise improve and keep in repair streets, avenues, lanes and alleys; and to establish, erect and keep in repair aqueducts and bridges.

SEC. 17. To provide for the lighting of the streets and erecting lamp posts, and establish, support and regulate night watches; to erect market houses, establish markets and market places and provide for the government and regulation thereof.

SEC. 18. To provide for erecting all needful buildings for the use of the city, and for enclosing, improving and regulating all public grounds belonging to the city; to regulate and control the live trees and shrubbery and the water courses and water privileges in the city and, so far as may be necessary, the water courses leading thereto in the immediate vicinity thereof.

SEC. 19. To license, tax and regulate auctioneers, merchants, retailers, grocers and taverns, ordinaries, hawkers, peddlers, brokers, pawnbrokers and money changers.

SEC. 20. To license, tax, and regulate hacking, carriages, wagons, carts and drays, and fix the rates to be charged for the carrying of persons and for wagonage, cartage and drayage of property, as also to license and regulate porters and fix the rates of porterage.

SEC. 21. To license, tax and regulate theatricals and other exhibitions, shows and amusements.

SEC. 22. To tax, restrain, prohibit and restrain tippling houses, dram shops, gaming houses, bawdy and other disorderly houses.

SEC. 23. To provide for the prevention and extinguishment of fires; to regulate the fixing of chimneys and the flues thereof and stove pipes; and to organize and establish fire companies.

SEC. 24. To regulate the storage of gunpowder, tar, pitch, resin and other combustible materials.

SEC. 25. To regulate and order parapet walls and other partition fences; to wall in the city or any part thereof; to restrain, regulate or prohibit the running at large of cattle, horses, mules, sheep, swine, goats and all kinds of poultry; and to tax and regulate the keeping of dogs, and to authorize the destruction of the same when running at large contrary to city ordinances.

SEC. 26. To establish standard weights and measures and to regulate the weights and measures to be used in the city in all cases not provided for by law.

SEC. 27. To provide for the inspecting and measuring of lumber and other building materials, and for the measurement of all kinds of mechanical work.

SEC. 28. To provide for the inspection and weighing of hay, lime and pit coal, and the measuring of charcoal, firewood and other fuel to be sold or used within the city.

SEC. 29. To license, regulate, prohibit or restrain the manufacturing, selling or giving away of spirituous, vinous or fermented liquors, [to license and regulate] tavern keepers, dram or tippling shop keepers, boarding, victualing or coffee houses, restaurants, saloons or other houses or places for the selling or giving away of ardent, vinous or fermented liquors; to provide for and regulate the inspection of tobacco, beef, pork, flour and meal; also beer, whisky, brandy and all other spirituous and fermented liquors.

SEC. 30. To regulate the weights, quality and price of bread sold and used in the city.

SEC. 31. To provide for taking the enumeration of the inhabitants of the city.

SEC. 32. To fix the compensation of all city officers, and regulate the fees of jurors, witnesses and others for services rendered under this act or any city ordinance.

SEC. 33. The city council shall have exclusive power within the city, by ordinance, to license, regulate, suppress or restrain billiard tables and from one to twenty pin alleys and every other description of gaming or gambling.

SEC. 34. The city council shall have exclusive power within the city, by ordinance, to regulate the police of the city; to impose fines, forfeitures and penalties for the breach of any ordinance, and provide for the recovery of such fines and forfeitures and the enforcement of such penalties; and to pass such ordinances as may be necessary and proper to carry into effect and execution the powers specified in this act: *Provided*, that such ordinances are not repugnant to the Constitution of the United States or the laws of this Territory.

SEC. 35. All ordinances passed by the city council shall, within one month after they shall have been passed, be published in some newspaper printed in the city, or certified copies thereof be posted up in three of the most public places in the city.

SEC. 36. All ordinances of the city may be proven by the seal of the corporation; and when published in book or pamphlet form, purporting to be printed or published by the authority of the corporation, the same shall be received in evidence in all courts or places without further proof.

SEC. 37. The mayor and aldermen shall be conservators of the peace within the limits of the city, and shall have all the powers of justices of the peace therein, both in civil and criminal cases arising under the laws of the Territory. They shall, as justices of the peace, within the limits of the city, perform the same duties, be governed by the same laws, give the same bonds and securities as other justices of the peace, and be commissioned as justices of the peace in and for said city, by the governor.

SEC. 38. The mayor and aldermen shall have jurisdiction in all cases arising under the ordinances of the corporation, and shall issue such process as may be necessary to carry said ordinances into execution and effect. Appeals may be had from any decision or judgment of said mayor or aldermen, arising under the ordinances of said city, in the same manner as appeals are taken from justices of the peace.

SEC. 39. The city council may sit at such times and places as may be prescribed by city ordinance; special meetings of which may at any time be called by the mayor or any two aldermen.

SEC. 40. All process issued by the mayor or aldermen shall be directed to the marshal, and in the execution thereof he shall be governed by the same laws as are or may be prescribed for the direction and compensation of constables in similar cases. The marshal shall also perform such other duties as may be required of him under the ordinances of said city, and shall be the principal ministerial officer.

SEC. 41. It shall be the duty of the recorder to make and keep accurate records of all ordinances made by the city council and all their proceedings in a corporate capacity, which record shall at all times be open to the inspection of the electors of said city, and he shall perform all other duties as may be required of him by the ordinances of the city council.

SEC. 42. When it shall be necessary to take private property for opening, widening or altering any public street, lane, avenue, or alley, the corporation shall make a just compensation therefor to the person whose property is so taken; and if the amount of such compensation cannot be agreed upon, the mayor shall cause the same to be ascertained by a jury of six disinterested men, who shall be inhabitants of the city.

SEC. 43. All jurors impaneled to inquire into the amount of benefits or damages that shall happen to the owners of property so proposed to be taken, shall first be sworn to that effect, and shall return to the mayor their inquest in writing, signed by each juror.

SEC. 44. In case the mayor shall at any time, be guilty of any palpable omission of duty, or shall willfully or corruptly be guilty of oppression, malconduct or partiality in the discharge of the duties of his office, he shall be liable to indictment; and, on conviction, he shall be liable to fine and imprisonment; and the court shall have power, on the recommend of the jury, to add to the judgment of the court, that he be removed from office.

SEC. 45. The city council shall have power to provide for the punishment of offenders and vagrants by imprisonment in the county or city jail, or by compelling them to labor upon the streets or other public works until the same shall be fully paid, in all cases where such offenders or vagrants shall fail or refuse to pay the fines and forfeitures which may be awarded against them.

SEC. 46. (1)

VI. SPRINGVILLE.

An Act to incorporate the city of Springville.

[*Approved February* 13, 1852.]

SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That all that district of country embraced in the following boundaries, to wit: Beginning at the south-east corner of Provo city incorporation, thence due east to the summit of the mountains, thence in line of summit of said mountains to a point due east of the south-east corner of Springville survey, thence west to Utah lake, thence northerly along the lake shore to the south-west corner of Provo city incorporation, thence east in line of Provo city incorporation to the place of beginning shall be known and designated under the name and style of Springville; and the inhabitants thereof are hereby constituted a body corporate and politic, by the name aforesaid, and shall have perpetual succession, and may have and use a common seal, which they may change and alter at pleasure. (2)

SEC. 2. The inhabitants of said city, by the name and style aforesaid, shall have power to sue and be sued, to plead and be impleaded, defend and be defended in all courts of law and equity and in all actions whatsoever; to purchase, receive and hold property, real and personal, in said city; to purchase, receive and hold real property beyond the city for burying grounds or other public purposes for the inhabitants of said city; to sell, lease, convey or dispose of property, real and personal, for the benefit of said city; to improve and protect such property, and to do all other things in relation thereto, as natural persons.

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(1) Repealed Jan. 15, 1862.

(2) As amended Jan. 14, 1867.

SEC. 3. There shall be a city council to consist of a mayor, two aldermen and three councilors, who shall have the qualifications of electors of said city, and shall be chosen by the qualified voters thereof, and shall hold their offices for two years, and until their successors shall be elected and qualified. The city council shall judge of the qualifications, elections and returns of their own members, and a majority of them shall form a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members, under such penalties as may be prescribed by ordinance.

SEC. 4. The mayor, aldermen and councilors, before entering on the duties of their offices, shall take and subscribe an oath or affirmation that they will support the Constitution of the United States and the laws of this Territory, and that they they will well and truly perform the duties of their offices, to the best of their skill and abilities.

SEC. 5. An election, for the election of one mayor, two aldermen and three councilors, shall be held on the first Monday in August, one thousand eight hundred and sixty-seven, and every two years thereafter, and shall be held, conducted and returns thereof made in such manner as shall be provided for by the ordinances of the city council. (1)

SEC. 6. All inhabitants who are of the age of eighteen [twenty-one] years, who are entitled to vote for Territorial officers, and who shall have been actual residents of said city sixty days next preceding said election, shall be entitled to vote for city officers.

SEC. 7. The city council shall have authority to levy and collect taxes, for city purposes, upon all taxable property, real and personal, within the limits of the city, not exceeding [one-half of] one per cent. per annum upon the assessed value thereof; and may enforce the payment of the same in any manner to be provided by ordinance, not repugnant to the Constitution of the United States and the laws of the Territory.

SEC. 8. The city council shall have power to appoint a recorder, treasurer, assessor and collector, marshal and supervisor of streets. They shall also have the power to appoint all such other officers, by ordinance, as may be necessary, define the duties of all city officers and remove them from office at pleasure.

SEC. 9. The city council shall have power to require of all officers, appointed in pursuance of this act, bonds with penalty and security for the faithful performance of their respective duties, such as may be deemed expedient; and also to require of all officers, appointed as aforesaid, to take an oath for the faithful performance of the duties of their respective offices.

SEC. 10. The city council shall have power and authority to make, ordain, establish and execute all such ordinances, not repugnant to the Constitution of the United States or the laws of this Territory, as they may deem necessary for the peace, benefit, good order, regulation, convenience and cleanliness of said city; for the protection of property therein from destruction by fire or otherwise, and for the health and happiness thereof. They shall have power to fill all vacancies, that may happen by death, resignation or removal, in any of the offices herein made elective; to fix and establish all the fees of the officers of said corporation not herein established; to impose such fines, not exceeding one hundred dollars for each offense, as they may deem just, for refusing to accept of any office in or under the corporation, or for misconduct therein; to divide the city into wards and specify the boundaries thereof.

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(1) As amended Jan. 14, 1867.

SEC. 11. To establish, support and regulate common schools; to borrow money on the credit of the city: *Provided*, that no sum or sums of money be borrowed on a greater interest than six per cent. per annum; nor shall the interest on the aggregate of all the sums borrowed and outstanding ever exceed one-half of the city revenue arising from taxes assessed on real estate within this corporation.

SEC. 12. To make regulations to prevent the introduction of contagious diseases into the city; to make quarantine laws for that purpose and enforce the same.

SEC. 13. To appropriate and provide for the payment of the expenses and debts of the city.

SEC. 14. To establish hospitals and make regulations for the government of the same; to make regulations to secure the general health of the inhabitants; to declare what shall be nuisances and to prevent and remove the same.

SEC. 15. To provide the city with water, to dig wells, lay pump logs and pipes and erect pumps in the streets for the extinguishment of fires and convenience of the inhabitants.

SEC. 16. To open, alter, widen, extend, establish, grade, pave or otherwise improve and keep in repair streets, avenues, lanes and alleys; and to establish, erect and keep in repair aqueducts and bridges.

SEC. 17. To provide for the lighting of the streets and erecting lamp posts, and to establish, support and regulate night watches; to erect market houses, establish markets and market places and provide for the government and regulation thereof.

SEC. 18. To provide for erecting all needful buildings for the use of the city, and for enclosing, improving and regulating all public grounds belonging to the city.

SEC. 19. To license, tax and regulate auctioneers, merchants, retailers, grocers and taverns, ordinaries, hawkers, peddlers, brokers, pawnbrokers and money changers.

SEC. 20. To license, tax and regulate hacking, carriages, wagons, carts and drays; and fix the rates to be charged for the carriage of persons and for wagonage, cartage and draying of property; as also to license and regulate porters and fix the rate of porterage.

SEC. 21. To license, tax and regulate theatricals and other exhibitions, shows and amusements.

SEC. 22. To tax, restrain, prohibit and suppress tippling houses, dram shops, gaming houses, bawdy and other disorderly houses.

SEC. 23. To provide for the prevention and extinguishment of fires;

to regulate the fixing of chimneys and the flues thereof and stove pipes; and to organize and establish fire companies.

Sec. 24. To regulate the storage of gunpowder, tar, pitch, resin and other combustible materials.

Sec. 25. To regulate and order parapet walls and other partition fences; to restrain, regulate or prohibit the running at large of cattle, horses, mules, sheep, swine, goats and all kinds of poultry; and to tax and regulate the keeping of dogs, and to authorize the destruction of the same when at large contrary to city ordinances.

Sec. 26. To establish standard weights and measures and regulate the weights and measures to be used in the city, in all cases not provided for by law.

Sec. 27. To provide for the inspection and measuring of lumber and other building materials, and for the measurement of all kinds of mechanical work.

Sec. 28. To provide for the inspection and weighing of hay, lime and stone coal, and the measuring of charcoal, fire wood and other fuel to be sold or used within the city.

Sec. 29. To license, regulate, prohibit or restrain the manufacturing, selling, or giving away of spirituous, vinous, or fermented liquors, [to license and regulate] tavern keepers, dram or tippling shop keepers, boarding, victualing or coffee houses, restaurants, saloons or other houses or places for the selling or giving away of ardent, vinous or fermented liquors; to provide for and regulate the inspection of tobacco, beef, pork, flour and meal; also beer, whisky, brandy and all other spirituous and fermented liquors.

Sec. 30. To regulate the weight, quality and price of bread sold and used in the city.

Sec. 31. To provide for taking the enumeration of the inhabitants of the city.

Sec. 32. To fix the compensation of all city officers and regulate the fees of jurors, witnesses and others for services rendered under this or any city ordinance.

Sec. 33. The city council shall have exclusive power within the city, by ordinance, to license, regulate, suppress or restrain billiard tables and from one to twenty pin alleys and every other description of gaming or gambling.

Sec. 34. The city council shall have exclusive power within the city, by ordinance, to regulate the police of the city; to impose fines, forfeitures and penalties for the breach of any ordinance, and provide for the recovery of such fines and forfeitures and the enforcement of such penalties; and to pass such ordinances as may be necessary and proper to carry into effect and execution the powers specified in this act: *Provided*, that such ordinances are not repugnant to the Constitution of the United States or the laws of this Territory.

Sec. 35. All ordinances passed by the city council shall, within one month after they shall have been passed, be published in some newspaper published in said city, or certified copies thereof be posted up in three of the most public places in the city.

Sec. 36. All ordinances of the city may be proven by the seal of the corporation; and when published in book or pamphlet form, purporting to be printed or published by the authority of the corporation, the same shall be received in evidence in all courts or places, without further proof.

SEC. 37. The mayor and aldermen shall be conservators of the peace within the limits of the city, and shall have all the powers of justices of the peace therein, both in civil and criminal cases arising under the laws of the Territory. They shall, as justices of the peace within the limits of said city, perform the same duties, be governed by the same laws, give the same bonds and securities as other justices of the peace, and be commissioned, as justices of the peace in and for said city, by the governor.

SEC. 38. The mayor and aldermen shall have jurisdiction in all cases arising under the ordinances of the corporation, and shall issue such process as may be necessary to carry said ordinances into execution and effect. Appeals may be had from any decision or judgment of said mayor or aldermen, arising under the ordinances of said city, in the same manner as appeals are taken from justices of the peace.

SEC. 39. The city council may sit at such times and places as may be prescribed by city ordinance; special meetings of which may at any time be called by the mayor or any two aldermen.

SEC. 40. All process issued by the mayor, or aldermen, shall be directed to the marshal, and, in the execution thereof, he shall be governed by the same laws as are or may be prescribed for the direction and compensation of constables in similar cases. The marshal shall also perform such other duties as may be required of him under the ordinances of said city, and shall be the principal ministerial officer.

SEC. 41. It shall be the duty of the recorder to make and keep accurate records of all ordinances made by the city council and of all their proceedings in their corporate capacity, which record shall at all times be open to the inspection of the electors of said city, and shall perform all other duties as may be required of him by the ordinances of the city council.

SEC. 42. When it shall be necessary to take private property for opening, widening or altering any public street, lane, avenue or alley, the corporation shall make a just compensation therefor to the person whose property is so taken; and if the amount of such compensation cannot be agreed upon, the mayor shall cause the same to be ascertained by a jury of six disinterested men, who shall be inhabitants of the city.

SEC. 43. All jurors, impaneled to inquire into the amount of benefits or damages that shall happen to the owners of property so proposed to be taken, shall first be sworn to that effect, and shall return to the mayor their inquest in writing, signed by each juror.

SEC. 44. In case the mayor shall, at any time, be guilty of a palpable omission of duty, or shall willfully and corruptly be guilty of oppression, malconduct or partiality in the discharge of the duties of his office, he shall be liable to indictment, and, on conviction, he shall be liable to fine and imprisonment; and the court shall have power, on the recommend of the jury, to add to the judgment of the court, that he be removed from office.

SEC. 45. The city council shall have power to provide for the punishment of offenders and vagrants by imprisonment in the county or city jail, or by compelling them to labor upon the streets or other public works, until the same shall be fully paid, and in all cases where such offenders or vagrants shall fail or refuse to pay the fines and forfeitures which may be recovered against them.

SEC. 46. (1)

VII. SPANISH FORK.

An Act to incorporate Spanish Fork city.

[*Approved January* 19, 1855.]

SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That all that district of Utah county embraced in the following boundaries, to wit: Beginning at the mouth of Water cañon, thence west thirty-seven degrees north to a stake known as station 1 in J. C. Snow's survey of said line, thence west three degrees south to the centre of Pond Town sloughs, thence down said sloughs to Duck creek, thence west to Peteetneet creek, thence down the main channel of said creek to Utah lake, thence north-easterly, along the shore of said lake to a point from which a south-east line will strike the mouth of the main sect leading into plat D, Springville survey, thence on a line of said sect to where it intersects the big slough, thence to the north-east corner of Palmyra field, thence to the south-east corner of the present Springville survey, thence east to the mountains, thence south along the base of the mountains to the place of beginning, shall be known and designated as Spanish Fork city; and the inhabitants thereof are hereby constituted a body corporate and politic, by the name aforesaid; and shall have perpetual succession, and may have and use a common seal, which they may change and alter at pleasure.

SEC. 2. The inhabitants of said city, by the name and style aforesaid, shall have power to sue and be sued, to plead and be impleaded, defend and be defended in all courts of law and equity and in all actions whatsoever; to purchase, receive and hold property, real and personal, in said city; to purchase, receive and hold real property, beyond the city, for burying grounds or other public purposes for the use of the inhabitants of said city; to sell, lease, or dispose of property, real and personal, for the benefit of said city; to improve and protect such property, and to do all other things in relation thereto as natural persons.

SEC. 3. There shall be a city council, to consist of a mayor, two aldermen and three councilors, who shall have the qualifications of electors of said city, and shall be chosen by the qualified voters thereof, and shall hold their offices for two years and until their successors shall be elected and qualified. The city council shall judge of the qualifications, elections and returns of their own members; and a majority of them shall form a quorum to do business, but a smaller number may adjourn from day to day and compel the attendance of absent members, under such penalties as may be prescribed by ordinance.

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(1) Repealed Jan. 15, 1862.

SEC. 4. The mayor, aldermen and councilors, before entering upon the duties of their offices, shall take and subscribe an oath or affirmation that they will support the Constitution of the United States and the laws of this Territory, and that they will well and truly perform all the duties of their offices to best of their skill and abilities.

SEC. 5. An election, for the election of one mayor, two aldermen and three councilors, shall be held on the second Monday of February, eighteen hundred and sixty-three, and every two years thereafter; and shall be held, conducted and returns thereof made in such manner as shall be provided for by the ordinances of the city council.

SEC. 6. All inhabitants who are of the age of eighteen [twenty-one] years, who are entitled to vote for Territorial officers, and who shall have been actual residents of said city sixty days next preceding said election shall be entitled to vote for city officers.

SEC. 7. The city council shall have authority annually to assess, collect and expend the necessary tax for roads, streets, schools and other public purposes, and regulate and control the same within the city, and may enforce the payment of said tax by law; and the inhabitants of the city shall be exempt from all other assessments for road or school purposes, except on such property as they may possess outside of the city: *Provided*, that nothing herein shall be so construed as to effect or infringe upon any tax assessed or authorized by any enactment of the governor and Legislative Assembly.

SEC. 8. The city council shall have power to appoint a recorder, treasurer, assessor and collector, marshal and supervisor of streets. They shall also have power to appoint all such other officers, by ordinance, as may be necessary, define the duties of all city officers and remove them from office at pleasure.

SEC. 9. The city council shall have power to require of all officers appointed in pursuance of this act, such bonds as may be deemed expedient, with penalty and security, for the faithful performance of their respective duties, and also to require of all officers, appointed as aforesaid, to take an oath for the faithful performance of the duties of their respective offices.

SEC. 10. The city council shall have power and authority to make, ordain, establish and execute all such ordinances, not repugnant to the Constitution of the United States or the laws of this Territory, as they may deem necessary for the peace, benefit, good order, regulation, convenience and cleanliness of said city; for the protection of property therein from destruction by fire or otherwise, and for the health and happiness thereof. They shall have power to fill all vacancies, that may happen by death, resignation or removal, in any of the offices herein made elective; to fix and establish all the fees of the officers of said corporation not herein established; to impose such fines, not exceeding one hundred dollars for each offense, as they may deem just, for refusing to accept of any office in or under the corporation, or for misconduct therein; to divide the city into wards, and specify the boundaries thereof.

SEC. 11. To establish, support and regulate common schools; to borrow money on the credit of the city: *Provided*, that no sum or sums of money be borrowed on a greater interest than six per cent. per annum; nor shall the interest on the aggregate of the sums borrowed and outstanding ever exceed one-half the city revenue arising from the taxes assessed on real estate within the city.

SEC. 12. To make regulations to prevent the introduction of contagious diseases into the city; to make quarantine laws for that purpose, and enforce the same.

SEC. 13. To appropriate and provide for the payment of the expenses and debts of the city.

SEC. 14. To establish hospitals and make regulations for the government of the same; to make regulations to secure the general health of the inhabitants; to declare what shall be nuisances and to prevent and remove the same.

SEC. 15. To provide the city with water; to dig wells, lay pump logs and pipes and erect pumps in the streets, for the extinguishment of fires and convenience of the inhabitants.

SEC. 16. To open, alter, widen, extend, establish, grade, pave or otherwise improve and keep in repair streets, avenues, lanes and alleys; and to establish, erect and keep in repair aqueducts and bridges.

SEC. 17. To provide for the lighting of the streets and erecting lamp posts; and to establish, support and regulate night watches; to erect market houses, establish markets and market places and to provide for the government and regulation thereof.

SEC. 18. To provide for erecting all needful buildings for the use of the city, and for enclosing, improving and regulating all public grounds belonging to the city; to regulate and control the live trees and shrubbery, and the water courses and water privileges in the city, and, so far as may be necessary, the water courses leading thereto in the immediate vicinity thereof.

SEC. 19. To license, tax and regulate auctioneers, merchants, retailers, grocers and taverns, ordinaries, hawkers, peddlers, brokers, pawnbrokers and money changers.

SEC. 20. To license, tax and regulate hacking, carriages, wagons, carts and drays; and fix the rates to be charged for the carriage of persons and for wagonage, cartage and drayage of property; as also to license and regulate porters and fix the rate of porterage.

SEC. 21. To license, tax, and regulate theatricals and other exhibitions, shows and amusements.

SEC. 22. To tax, restrain, prohibit and suppress tippling houses, dram shops, gaming houses, bawdy and other disorderly houses.

SEC. 23. To provide for the prevention and extinguishment of fires; to regulate the fixing of chimneys and the flues thereof and stove pipes, and to organize and establish fire companies.

SEC. 24. To regulate the storage of gunpowder, tar, pitch, resin and other combustible materials.

SEC. 25. To regulate and order parapet walls and other partition fences; to wall in the city or any part thereof; to restrain, regulate or prohibit the running at large of cattle, horses, mules, sheep, swine, goats and all kinds of poultry; and to tax and regulate the keeping of dogs, and to authorize the destruction of the same when at large contrary to city ordinances.

SEC. 26. To establish standard weights and measures, and regulate the weights and measures to be used in the city, in all cases not provided for by law.

SEC. 27. To provide for the inspection and measuring of lumber and other building materials, and for the measurement of all kinds of mechanical work.

SEC. 28. To provide for the inspection and weighing of hay, lime and pit coal, and the measuring of charcoal, firewood and other fuel to be sold or used within the city.

SEC. 29. To license, regulate, prohibit or restrain the manufacturing, selling or giving away of spirituous, vinous or fermented liquors, [to license and regulate] tavern keepers, dram or tippling shop keepers, boarding, victualing or coffee houses, restaurants, saloons or other houses or places for the selling or giving away of ardent, vinous or fermented liquors; to provide for and regulate the inspection of tobacco, beef, pork, flour and meal; also beer, whisky, brandy and all other spirituous and fermented liquors.

SEC. 30. To regulate the weights, quality and price of bread sold and used in the city.

SEC. 31. To provide for taking the enumeration of the inhabitants of the city.

SEC. 32. To fix the compensation of all city officers, and regulate the fees of jurors, witnesses and others for services rendered under this or any city ordinance.

SEC. 33. The city council shall have exclusive power within the city, by ordinance, to license, regulate, suppress or restrain billiard tables and from one to twenty pin alleys, and every other description of gaming or gambling.

SEC. 34. The city council shall have exclusive power within the city, by ordinance, to regulate the police of the city; to impose fines, forfeitures and penalties for the breach of any ordinance, and provide for the recovery of such fines and forfeitures and the enforcement of such penalties; and to pass such ordinances as may be necessary and proper to carry into effect and execution the powers specified in this act: *Provided*, that such ordinances are not repugnant to the Constitution of the United States or the laws of this Territory.

SEC. 35. All ordinances passed by the city council shall, within one month after they shall have been passed, be published in some newspaper printed in said city, or certified copies thereof be posted up in three of the most public places in the city.

SEC. 36. All ordinances of the city may be proven by seal of the corporation; and when published in book or pamphlet form, purporting to be printed or published by the authority of the corporation, the same shall be received in evidence in all courts or places without further proof.

SEC. 37. The mayor and aldermen shall be conservators of the peace within the limits of the city, and shall have all the powers of justices of the peace therein, both in civil and criminal cases arising under the laws of the Territory. The shall, as justices of the peace within the limits of the city, perform the same duties, be governed by the same laws, give the same bonds and securities as other justices of the peace, and be commissioned, as justices of the peace in and for said city, by the governor.

SEC. 38. The mayor and alderman shall have jurisdiction in all cases arising under the ordinances of the corporation, and shall issue such process as may be necessary to carry said ordinances into execution and effect. Appeals may be had from any decision or judgment of said mayor or aldermen, arising under the ordinances of the city, in the same manner as appeals are taken from justices of the peace.

SEC. 39. The city council may sit at such times and places as may be prescribed by city ordinance, special meetings of which may at any time be called by the mayor or any two aldermen.

SEC. 40. All process issued by the mayor or aldermen shall be directed to the marshal; and in the execution thereof he shall be governed by the same laws as are or may be prescribed for the direction and compensation of constables in similar cases. The marshal shall also perform such other duties as may be required of him under the ordinances of said city, and shall be the principal ministerial officer.

SEC. 41. It shall be the duty of the recorder to make and keep accurate records of all ordinances made by the city council and of all their proceedings in their corporate capacity, which record shall at all times be open to the inspection of the electors of said city, and he shall perform all other duties as may be required of him by the ordinances of the city council.

SEC. 42. When it shall be necessary to take private property for opening, widening or altering any public street, lane, avenue or alley, the corporation shall make a just compensation therefor, to the person whose property is so taken; and if the amount of such compensation cannot be agreed upon, the mayor shall cause the same to be ascertained by a jury of six disinterested men, who shall be inhabitants of the city.

SEC. 43. All jurors, impaneled to enquire into the amount of benefits or damages that shall happen to the owners of property so proposed to be taken, shall first be sworn to that effect, and shall return to the mayor their inquest in writing, signed by each juror.

SEC. 44. In case the mayor shall, at any time, be guilty of any palpable omission of duty, or shall willfully or corruptly be guilty of oppression, malconduct or partiality in the discharge of the duties of his office, he shall be liable to indictment; and, on conviction, he shall be liable to fine and imprisonment; and the court shall have power, on the recommend of the jury, to add to the judgment of the court that he be removed from office.

SEC. 45. The city council shall have power to provide for the punishment of offenders and vagrants by imprisonment in the county or city jail, or by compelling them to labor on the streets or other public works until the same shall be fully paid, in all cases where such offenders or vagrants shall fail or refuse to pay the fines and forfeitures which may be awarded against them.

SEC. 46. (1)

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(1) Repealed Jan. 15, 1862.

VIII. PAYSON.

An Act to incorporate the city of Payson.

[*Approved January 20, 1865.*]

SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That all the territory embraced in the following boundaries, viz: Commencing at a point on the east bank of Utah lake, due west from the centre of the public square, in the city of Payson in Utah county, thence south one mile, thence east to the mountains, thence along the base of the mountains to a spring known as "Goose Nest spring," thence northerly to a point where the bridge crosses the Pond Town slough, thence down said slough to Duck creek, then west to Peteetneet creek and down the main channel of said creek to Utah lake, thence south along the shore of said lake to the place of the beginning shall be known and designated as Payson; and the inhabitants thereof are hereby constituted a body corporate and politic by the name aforesaid, and shall have perpetual succession, and may have and use a common seal, which they may change and alter at pleasure.

SEC. 2. The inhabitants of said city, by the name and style aforesaid, shall have power to sue and be sued, to plead and be impleaded, defend and be defended in all courts of law and equity and in all actions whatsoever; to purchase, receive, hold, sell, lease, convey and dispose of property real and personal for the benefit of said city, both within and without its corporate boundaries; to improve and protect such property, and to do all other things in relation thereto, as natural persons.

SEC. 3. The municipal government of said city is hereby vested in a city council, to be composed of a mayor, three aldermen, one from each ward, and five councilors, who shall have the qualifications of electors in said city, and shall be chosen by the qualified voters thereof, and shall hold their office for two years, and until their successors are elected and qualified.

SEC. 4. An election shall be held on the second Monday in February next, and every two years thereafter on said day, at which there shall be elected one mayor, three aldermen and five councilors; and the persons respectively receiving the highest number of votes cast in the city for said offices, shall be declared elected. When two or more candidates shall have an equal number of votes for the same office, the election shall be determined by the city council.

SEC. 5. The first election under this act shall be conducted in the following manner, to wit: The county clerk of Utah county shall cause notice of the time and place, and the number and kind of officers to be chosen, to be posted up in four public places in said city, at least ten days previous to said election. Two judges shall be selected by the probate judge of Utah county, at least one week previous to the day of election; said judges shall choose two clerks; and the judges and clerks, before entering upon their duties, shall take and subscribe an oath or affirmation for the faithful discharge thereof. The polls shall be open at eight o'clock a. m., and shall close at six o'clock p. m. At the close of the election the judges shall seal up the ballot box and the list of names of the electors and transmit the same, within two days, to the county clerk of Utah county. As soon as the returns are received the county clerk, in the presence of the probate judge, shall unseal and examine them, and furnish, within five days, to each person having the highest number of votes, a certificate of his election. In case of a tie, it shall be decided by lot drawn by the county clerk in presence of the probate judge.

SEC. 6. All subsequent elections held under this act shall be held, conducted and returns thereof made as may be provided for by ordinance of the city council.

SEC. 7. The city council shall be judge of the qualifications, elections and returns of their own members; and a majority of them shall form a quorum to do business, shall determine the rules of their own proceedings and shall meet at such time and place as they may direct; the mayor shall preside when present, and have a casting vote; and, in the absence of the mayor, any aldermen present may be appointed to preside over said meeting.

SEC. 8. The city council may hold stated meetings; and special meetings may be called by the mayor or any two aldermen, by notice to each of the members of said council, served personally or left at their usual places of abode.

SEC. 9. The city council shall have power to appoint a marshal, recorder (who shall be the auditor of public accounts), treasurer, assessor and collector, supervisor of streets, surveyor and attorney, a sexton, a sealer of weights and measures and all such other officers as may be necessary, define their duties, remove them from office at pleasure and fix and establish the fees of all officers, jurors and witnesses.

SEC. 10. All officers elected in accordance with the fourth section of this act may be removed for cause from such office by a vote of two-thirds of the city council, and shall be furnished with the charges and have an opportunity to be heard in his defense; and the council shall have power to compel the attendance of witnesses and the production of papers, when necessary.

SEC. 11. When a vacancy shall happen by the death, resignation or removal of any officer, such vacancy may be filled by the city council; and every person elected or appointed to any office under this act shall, before he enters upon the duties thereof, take and subscribe an oath or affirmation that he will support the Constitution of the United States, the laws of this Territory and the ordinances of the city, and that he will well and truly perform all the duties of his office to the best of his knowledge and ability; and he may be required to give bonds as shall be prescribed by city ordinances, which oath and bond shall be filed with the city recorder.

SEC. 12. The city council shall have power to divide the city into wards and specify the boundaries thereof, and, when necessary, create additional wards and add to the number of aldermen and councilors and proportion them among the several wards, as may be just and most conducive to the welfare of said city.

SEC. 13. The mayor and aldermen shall be conservators of the peace within the limits of the city, and shall give bonds and qualify as other justices of the peace; and, when so qualified, shall possess the same powers and jurisdiction, both in civil and criminal cases arising under the laws of the Territory, and may be commissioned as justices of the peace in and for said city by the governor. They shall account for and pay over all fines and forfeitures arising under the ordinances of the city into the city treasury, and all fines and forfeitures arising under the laws of the Territory into the county treasury, and shall issue such process as may be necessary to carry into effect all ordinances of said city. Appeals may be had from any decision or judgment of a mayor's or alderman's court in the same manner as or may be provided by statute for appeals from justices' courts; and they shall account for and pay over to the city treasurer, within three months, all fines and forfeitures received by them by virtue of their office; and they shall each keep a docket, subject at all times to the inspection of the city council and all other parties interested.

SEC. 14. All process issued by the mayor or an alderman shall be directed to the marshal or other legal officer, and in execution thereof he shall be governed by such rules and regulations as may be provided by city ordinance.

SEC. 15. It shall be the duty of the recorder to make and keep accurate records of all ordinances made by the city council and all their proceedings in a corporate capacity, which record shall at all times be open to the inspection of the electors of the city and all other parties interested, and audit all accounts of said incorporation. He shall have and keep a plat of all surveys within the city; and he is hereby authorized to take the acknowledgment of deeds, transfers and other instruments of writing, and shall perform such other duties as may be required of him by city ordinance.

SEC. 16. The treasurer shall receive all money or funds belonging to the city, and shall keep an accurate account of all receipts and expenditures in such manner as the city council shall direct. He shall pay all funds that may come to hand by virtue of his office upon orders signed by the auditor of public accounts, and shall report to the city council a true account of his receipts and disbursements, as they may require.

SEC. 17. The city council shall have power within the city, by ordinance to annually levy and collect taxes on the assessed value of all property in the city made taxable by the laws of the Territory, for the following named purposes, to wit: Not to exceed five mills on the dollar for contingent expenses, nor to exceed five mills on the dollar to open, improve and keep in repair the streets of the city. The city council is further empowered to divide the city into school districts, provide for the election of trustees, appoint a board of school inspectors, annually assess and collect and expend the necessary tax for school purposes, and for furnishing the city with water for irrigating and other purposes, and regulate and control the same; and furthermore, so far as may be necessary, control the water courses leading thereto in the immediate vicinity thereof.

SEC. 18. The city council shall have the management and control of the finances and property of said city.

SEC. 19. To require, and it is hereby made the duty of, every male resident of the city, over the age of eighteen and under the age of fifty years, to labor not to exceed two days in each year upon the streets; but every person may, at his option, pay one dollar and fifty cents for the day he shall be so bound to labor: *Provided*, it be paid within five days from the time he shall be notified by the street supervisor. In default of payment as aforesaid, the same may be collected as other taxes.

SEC. 20. The council shall have power to borrow money for city purposes, the interest of which shall not exceed one-fourth of the city revenue arising from taxes of the previous year.

SEC. 21. The city council shall have power, by ordinance, to regulate the form of the assessment rolls. The annual assessment roll shall be returned by the assessor on or before the first Monday of April in each year, but the time may be extended or additions made thereto by order of the city council. On the return thereof, the city council shall fix a day for hearing objections thereto; and any person feeling aggrieved by the assessment of his property may appear at the time specified and make his objections, which shall be heard and determined upon by the city council; and they shall have power to alter, add to, take from and otherwise correct and revise said assessment roll.

SEC. 22. The collector shall be furnished, within thirty days after the assessment rolls are corrected, with a list of taxes to be collected; and if not paid when demanded, the collector shall have power to collect said taxes with interest and cost, by suit in the corporate name as may be provided by ordinance. The assessment roll shall in all cases be evidence on the part of the corporation.

SEC. 23. To appropriate and provide for the payment of the expenses and debts of the city.

SEC. 24. To make regulations to prevent the introduction of contagious diseases into the city; to make quarantine laws and enforce the same within the city and around it, not exceeding twelve miles next beyond the boundaries thereof.

SEC. 25. To establish hospitals and make regulations for the government of the same; to make regulations to secure the general health of the inhabitants; to declare what shall be nuisances and remove the same.

SEC. 26. To provide the city with water; to dig wells, lay pump logs and pipes and erect pumps in the streets for the extinguishment of fires and the convenience of the inhabitants.

SEC. 27. To direct or prohibit the location and management of houses for the storing of gunpowder, tar, pitch, resin or other combustible and dangerous materials within the city, and to regulate the conveying of gunpowder.

SEC. 28. To exclusively control, regulate, repair, amend and clear the streets, alleys, bridges, sidewalks or crosswalks, and open, widen, straighten or vacate streets and alleys and put drains or ditches and sewers therein, and prevent the incumbering of the streets in any manner and protect the same from any encroachment and injury.

SEC. 29. To provide for the lighting of streets and erecting lamp posts; to erect market houses and establish markets and market places, and provide for the government and regulation thereof.

SEC. 30. To provide for the erection of all needful buildings for the use of the city and for enclosing, improving and regulating all public grounds belonging to the city.

SEC. 31. To license, regulate, prohibit or restrain the manufacturers, sellers or vendors of spirituous or fermented liquors, tavern keepers, dram or tippling shop keepers, boarding, victualing or coffee houses, restaurants, saloons, or other houses or places for the selling or giving away of wines or other liquors, whether ardent, vinous or fermented.

SEC. 32. To license, tax and regulate auctioneers, merchants, retailers, grocers, ordinaries, hawkers, peddlers, brokers, pawnbrokers and money changers.

SEC. 33. To regulate the selling or giving away of any ardent spirits or other intoxicating liquors by any shopkeeper, grocer or trader, to be drank in any shop, store, grocery, outhouse, yard, garden or other place within the city, except by persons or at places duly licensed; to forbid the selling or giving away of ardent spirits or other intoxicating liquors to any child, apprentice or servant, without the consent of his or her parent, guardian, master or mistress, or to any Indian.

SEC. 34. To regulate and license or prohibit butchers, and to revoke their license for malconduct in the course of trade; and to regulate, license or restrain the sale of fresh meat and vegetables in the city.

SEC. 35. To license, tax, regulate, suppress or prohibit billiard tables, pin alleys, nine or ten pin alleys or table and ball alleys; to suppress or restrain all disorderly houses and groceries; to authorize the destruction and demolition of all instruments and devices used for the purpose of gaming and all kinds of gambling; to prevent any riot, noise, disturbance or disorderly assemblage; and to restrain and punish vagrants, mendicants, street beggars and prostitutes.

SEC. 36. To regulate, license, suppress or prohibit all exhibitions of common showmen, shows of every kind, concerts or other musical entertainments, exhibitions of natural or artificial curiosities, caravans, circuses, theatrical performances, ball rooms and all other exhibitions and amusements.

SEC. 37. To license, tax and regulate hacking, carriages, wagons, carts, and drays, and fix the rates to be charged for the carrying of persons and for wagonage, cartage and drayage of property as also to license and regulate porters and fix the rate of porterage.

SEC. 38. To provide for the prevention and extinguishment of fires; to regulate the fixing of chimneys and the flues thereof and stove pipes; and to organize and establish fire companies.

SEC. 39. To regulate and order parapet walls and other partition fences.

SEC. 40. To establish standard weights and measures and to regulate the weights and measures to be used in the city, in all cases not provided by law.

SEC. 41. To provide for the inspecting and measuring of lumber and other building materials, and for the measurement of all kinds of mechanical work.

SEC. 42. To provide for the inspection and weighing of hay, lime and stone coal, and the measuring of charcoal, firewood and other fuel to be sold or used within the city.

Sec. 43. To provide for and regulate the inspection of tobacco, beef, pork, flour and meal; also beer, whisky, brandy and all other spirituous or fermented liquors.

Sec. 44. To regulate the weight and quality and price of bread sold and used in the city.

Sec. 45. The city council shall have exclusive power within the city, by ordinance, to license, regulate or restrain the keeping of ferries and toll bridges.

Sec. 46. To provide for the taking the enumeration of the inhabitants of the city; to regulate the burial of the dead and registration of births and deaths; to direct the returning and keeping of bills of mortality; and to impose penalties on physicians, sextons and others for any default in the premises.

Sec. 47. To prevent horse racing, immoderate riding and driving in the streets, and to authorize their being stopped by any person; to punish or prohibit the abuse of animals; to compel persons to put up posts in front of their lots to fasten their horses and other animals; to compel the fastening of horses, mules, oxen or other animals attached to vehicles, whilst standing or remaining in the streets.

Sec. 48. To prevent incumbering of the streets or sidewalks, lanes, alleys and public grounds with carriages, tents, wagons, carts, sleighs, horses or other animals, sleds, wheelbarrows, boxes, lumber, timber, firewood, posts, awnings, signs, adobies or any material or substance whatever.

Sec. 49. To restrain, regulate or prohibit the running at large of cattle, horses, mules, sheep, swine, goats and all kinds of poultry; and to tax, prevent or regulate the keeping of dogs, and to authorize the destruction of the same when at large contrary to city ordinance.

Sec. 50. To compel the owner or occupant of any grocery, cellar, tallow chandler shop, soap factory, tannery, stable, barn, privy, sewer or any unwholesome place, to cleanse, remove or abate the same from time to time, as oft as may be necessary for the health, comfort and convenience of the inhabitants of said city.

Sec. 51. To direct the location and management of and regulate breweries and tanneries; and to direct the location, management and construction of and restrain or prohibit within the city distilleries, slaughtering establishments, or places where nauseous, offensive or unwholesome business may be carried on.

Sec. 52. To prevent any person from bringing, depositing or having within the limits of the city any dead carcass or any unwholesome substance, and to require the removal or the destruction of the same by any person who shall have placed or caused to be placed upon or near his premises or near any of the streams of this city any such substance, or any putrid or unsound beef, pork, or fish, hides or skins of any kind; and on his default to authorize the removal or destruction of the same by any officer of said city.

Sec. 53. To direct and regulate the planting and preserving of trees in the streets and public grounds, and regulate the fencing of lots within the boundaries of the city.

Sec. 54. To prevent the ringing of bells, the blowing of horns and bugles, the crying of goods and all other notices, performances and devices tending to disturb the peace and quiet of the said city.

SEC. 55. To grant and issue licenses, and direct the manner of issuing and registering thereof. Bonds may be taken on the granting of licenses, for the due observance of the ordinances of the city council.

SEC. 56. To require every merchant, retailer, trader and dealer in merchandise or property of every description which is sold by measure or weight, to cause their weights and measures to be sealed by the city sealer and to be subject to his inspection, the standard of which weights and measures shall be conformable to those established by law.

SEC. 57. The city council shall have power to make such ordinances and resolutions, not contrary to the Constitution and laws of the United States and the laws of the Territory, as may be necessary and expedient to carry into effect the powers vested in the city council or any officer of said city by this act, and enforce observance of all ordinances and resolutions made in pursuance of this act, by penalties not exceeding one hundred dollars, or imprisonment not to exceed six months, or both.

SEC. 58. The city council shall have exclusive authority and power to establish and regulate the police of the city; to impose fines, forfeitures and penalties for the breach of any ordinance; to provide for the recovery of such fines and forfeitures and the enforcement of such penalties; and to pass, make, ordain, establish and execute all such ordinances, not repugnant to the Constitution and laws of the United States or the laws of this Territory, as they may deem necessary for carrying into effect and execution the powers specified in this act, and for the peace, good order, regulation, convenience and cleanliness of the city; for the protection of property therein from destruction by fire or otherwise, and for the health, safety and happiness of the inhabitants thereof.

SEC. 59. To provide for the punishment of offenders and vagrants by imprisonment in the county or city jail, or by compelling them to labor on the streets or other public works until the same shall be fully paid, in all cases where such offenders or vagrants shall fail or refuse to pay the fines and ferfeitures which may be awarded against them.

SEC. 60. All ordinances passed by the city council shall, within one month after they shall have been passed, be published in some newspaper printed in said city, or certified copies thereof be posted up in three of the most public places in the city.

SEC. 61. All ordinances of the city may be proven by the seal of the corporation; and when printed or published in book form, purporting to be printed or published by the authority of the city council, the same shall be received in evidence in all courts or places without further proof.

SEC. 62. When it shall be necessary to take private property for opening, widening, or altering any public street, lane, avenue or alley, the corporation shall make a just compensation therefor to the person whose property is so taken; and if the amount of such compensation cannot be agreed upon, the mayor shall cause the same to be ascertained by a jury of six disinterested men, who shall be inhabitants of the city.

SEC. 63. All jurors, impaneled to inquire into the amounts of benefits or damages that shall happen to the owners of property so proposed to be taken, shall first be sworn to that effect; and shall return to the mayor or presiding officer of the city council their inquest in writing, signed by each juror.

SEC. 64. All ordinances, resolutions and regulations now in force in the city of Payson, and not inconsistent with this act, shall remain in force until altered, modified or repealed by the city council after this act shall take effect.

SEC. 65. All actions, rights, fines, penalties and forfeitures in suit or otherwise, which have accrued under the ordinances incorporating Payson city, shall be vested in and prosecuted by the corporation hereby created.

SEC. 66. All plots and surveys of lands, lots or other places within said city, heretofore surveyed by the surveyor, and all plots and surveys of lands, lots or other places that may be hereafter surveyed and all certificates of surveys given by him shall be deemed valid by this act.

SEC. 67. All property now belonging to Payson city is hereby vested in the corporation created by this act; and the officers of said corporation now in office shall respectively continue in the same, until superseded in conformity to the provisions thereof, but shall be governed by this act.

SEC. 68. This act shall not invalidate any act done by the present city council of Payson city or by its officers, nor divest their successors under this act of any right, property or otherwise, or liability which may have accrued to or been created by said council prior to the passage of this act.

SEC. 69. All officers of the city, created conservators of the peace by this act, shall have power to arrest, or cause to be arrested, with or without process, all persons who shall break the peace, commit for examination and, if necessary, detain such persons in custody forty-eight hours in the city prison or other safe place, and shall have and exercise such other powers, as conservators of the peace, as the city council may prescribe.

SEC. 70. Nothing in this act shall be so construed as to deprive the present city council of Payson city of any power or authority conferred upon them by the ordinance incorporating said city and the act amendatory thereto; but said city council shall possess, exercise and enjoy all the powers and authority heretofore conferred upon them, except so far as such powers and authority have been expressly modified and repealed by this act, until said city council are superseded by the election and qualification of their successors under this act.

SEC. 71. All laws or parts of laws conflicting with the foregoing are hereby repealed.

SEC. 72. The city council shall cause to be published in some newspaper published in Payson city, or posted up in three public places, on or before the first day of December in each year, a statement of the amount of city revenue, specifying in said statement whence derived and for what disbursed.

An Act granting the city council of Payson city the right of control of the waters of Spring creek.

[*Approved January* 18, 1861.]

SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That the city council of the city of Payson are hereby empowered and authorized to construct a dam or reservoir on Spring creek, south of said city, at such place as they may deem suitable, and control the waters thereof for the use and benefit of the citizens of Payson city, and regulate and control the same.

CHAPTER VIII.

OF FILLMORE CITY INCORPORATION.

An Act to incorporate Fillmore city, in Millard county.

[*Approved January* 12, 1867.]

SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That all that district of Millard county embraced in the following boundaries, to wit: Beginning at a point three miles due east of the south-east corner of the public square now surveyed, thence south three miles, thence west six miles, thence north six miles, thence east six miles, thence south three miles to the place of beginning, shall be known and designated under the name and style of Fillmore city; and the inhabitants thereof are hereby constituted a body corporate and politic by the name aforesaid, and may have and use a common seal, which they may change and alter at pleasure.

SEC. 2. The inhabitants of said city, by the name and style aforesaid, shall have power to sue and be sued, to plead and be impleaded, defend and be defended in all courts of law and equity and in all actions whatsoever; to purchase, receive and hold property real and personal; to purchase, receive and hold real property beyond the city for burying grounds or other public purposes for the use of the inhabitants of said city; to sell, lease, convey or dispose of property, real and personal, for the benefit of said city; to improve and protect such property, and to do all other things in relation thereto as natural persons.

SEC. 3. There shall be a city council to consist of a mayor and five councilors, who shall have the qualifications of electors of said city, and shall be chosen by the qualified voters thereof, and shall hold their offices for two years and until their successors shall be elected and qualified. The city council shall judge of the qualifications, elections and returns of their own members, and a majority of them shall form a quorum to do business; but a smaller number may adjourn from day to day and compel the attendance of absent members, under such penalties as may be prescribed by ordinance; there shall also be elected in like manner two justices of the peace who shall have the qualifications of voters, be commissioned by the governor, and have jurisdiction in all cases arising under the ordinances of the city.

SEC. 4. The mayor and councilors, before entering upon the duties of their offices shall take and subscribe an oath or affirmation that they will support the Constitution of the United States and the laws of this Territory, and that they will well and truly perform all the duties of their offices to the best of their skill and abilities.

SEC. 5. One mayor and five councilors shall be elected biennially, and the first election under this act shall be at such time and place as the probate judge of Millard county shall direct: *Provided*, said election shall be on or before the first Monday in August next. Said election shall be held and conducted as is now provided by law for the holding of elections for county and Territorial officers; and at the said first election all electors within said city limits shall be entitled to vote.

SEC. 6. The clerks of election shall leave with each person elected, or at his usual place of residence, within five days after the election, a written notice of his election; and each person so notified shall, within ten days after the election, take the oath or affirmation hereinbefore mentioned, a certificate of which oath shall be deposited with the recorder, whose appointment is hereinafter provided for, and be by him preserved; and all subsequent elections shall be held, conducted and returns thereof made as may be provided for by ordinance of the city council.

SEC. 7. The city council shall have authority to levy and collect taxes, for city purposes, upon all taxable property real and personal within the limits of the city, not exceeding one-half of one per cent. per annum upon the assessed value thereof; and may enforce the payment of the same in any manner, to be provided by ordinance not repugnant to the Constitution of the United States, or the laws of this Territory.

SEC. 8. The city council shall have power to appoint a recorder, treasurer, assessor and collector, marshal and supervisor of streets. They shall also have power to appoint all such other officers, by ordinance, as may be necessary, define the duties of all city officers and remove them from office at pleasure.

SEC. 9. The city council shall have power to require of all officers, appointed in pursuance of this act, bonds with security for the faithful performance of their respective duties, and also to require of all officers, appointed as aforesaid, to take an oath for the faithful performance of the duties of their respective offices.

SEC. 10. The city council shall have power and authority to make, ordain, establish and execute all such ordinances, not repugnant to the Constitution of the United States or the laws of this Territory, as they may deem necessary for the peace, benefit, good order, regulation, convenience and cleanliness of said city; for the protection of property therein from destruction by fire or otherwise, and for the health and happiness of the inhabitants thereof; and shall have control of the water and water courses leading to the city: *Provided*, that such control shall not be exercised to the injury of any rights already acquired by actual settlers thereon; and shall have control of the water courses and mill privileges within said city; but in no case shall they interfere with the natural rights of others acquired in relation to water privileges within said city. They shall have power to fill all vacancies that may happen by death, resignation, removal, or otherwise, in any of the offices herein made elective; to fix and establish the fees of the officers of said corporation; to impose such fines, not exceeding one hundred dollars, and imprisonment not exceeding six months, for each offense, for the breach or violation of any city ordinance; to divide the city into wards and specify the boundaries thereof.

SEC. 11. All ordinances passed by the city council shall, within one month after they shall have been passed, be published in some newspaper printed in said city, or certified copies thereof be posted up in three of the most public places in the city.

SEC. 12. All ordinances of the city may be proven by the seal of the corporation; and when printed or published in book or pamphlet form, purporting to be printed or published by the authority of the corporation, the same shall be received in evidence in all courts and places, without further proof.

SEC. 13. The justices of the peace of said city shall have all the powers of other justices of the peace, both in civil and criminal cases arising under the laws of the Territory; they shall perform the same duties, be governed by the same laws, and give the same bonds and securities as other justices of the peace; they shall have exclusive jurisdiction in all cases arising under the ordinances of the corporation, and shall issue such process as may be necessary to carry such ordinances into execution. Appeals may be had from any decision or judgment of said justices, arising under the ordinances of said city or the laws of the Territory, in the same manner as appeals are or may be taken from other justices of the peace.

SEC. 14. The mayor shall be the chief executive officer of said corporation; he shall preside in the city council, and shall have power to veto any ordinance when not passed by four-fifths majority; and it shall be his duty to sign all city ordinances.

SEC. 15. The city council shall have power to restrain, regulate or prohibit the running at large of cattle, horses, mules, sheep, swine, goats and all kinds of poultry; and to tax and regulate the keeping of dogs, and to authorize the destruction of the same when at large contrary to city ordinance.

SEC. 16. To license, regulate, prohibit or restrain the manufacturing, selling or giving away of spirituous, vinous or fermented liquors; [to license and regulate] tavern keepers, dram or tippling shop keepers, boarding, victualing or coffee houses, restaurants, saloons or other houses or places for the selling or giving away of ardent, vinous or fermented liquors.

SEC. 17. All ordinances, resolutions and regulations now in force in Fillmore city, and not inconsistent with this act, shall remain in force until altered, modified or repealed by the city council after this act shall take effect.

SEC. 18. This act shall not invalidate any act done by the present city council of Fillmore city, or by its officers, nor divest their successors, under this act, of any right, property, or otherwise, or liability which may have accrued to or been created by said council prior to the passage of this act.

SEC. 19. The city council shall have exclusive power by ordinance to regulate the police of the city; to license, tax and regulate auctioneers, merchants and retailers; to license, tax and regulate theatrical and other exhibitions, shows and amusements; to tax, restrain, prohibit and suppress gaming, bawdy and other disorderly houses.

SEC. 20. This act shall be in force on and after the tenth day of February, 1867, and may be amended or repealed at the pleasure of the Legislative Assembly.

CHAPTER IX.

OF BEAVER CITY INCORPORATION.

An Act to incorporate Beaver city, in Beaver county.

[*Approved January* 10, 1867.]

SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That all that portion of country situated within the following boundaries, to wit: Beginning at a point one and a half miles south of the bridge across Beaver river at the point where the military road crosses Beaver river, thence east two miles, thence north six miles, thence west six miles, thence south six miles, thence east four miles to the place of beginning, shall be known and designated by the name of Beaver city; and the inhabitants thereof are hereby constituted a body corporate and politic by the name aforesaid, and may have and use a common seal which they may change and alter at pleasure.

SEC. 2. The inhabitants of said city, by the name and style aforesaid, shall have power to sue and be sued, to plead and be impleaded, defend and be defended in all courts of law and equity, and in all actions whatsoever; to purchase, receive and hold property real and personal in said city; to purchase, receive and hold real property beyond the city for burying grounds or other public purposes for the use of the inhabitants of said city; to improve and protect such property, and to do all other things in relation thereto as natural persons.

SEC. 3. There shall be a city council, to consist of a mayor and five councilors, who shall have the qualifications of electors of said city, and shall be chosen by the qualified voters thereof, and shall hold their office for two years and until their successors shall be elected and qualified. The city council shall judge of the qualifications, elections and returns of their own members, and a majority of them shall form a quorum to do business; but a smaller number may adjourn from day to day, and compel the attendance of absent members under such penalties as may be prescribed by ordinance; there shall also be elected in like manner two justices of the peace, who shall have the qualifications of voters, be commissioned by the governor and have jurisdiction in all cases arising under the ordinances of the city.

SEC. 4. The mayor and councilors, before entering upon the duties of their offices, shall take and subscribe an oath or affirmation that they will support the Constitution of the United States and the laws of this Territory, and that they will well and truly perform all the duties of their offices to the best of their skill and abilities.

SEC. 5. One mayor and five councilors shall be elected biennially, and the first election under this act shall be at such time in said city as the probate judge of Beaver county shall direct: *Provided*, said election shall be on or before the first Monday in August next. Said election shall be held and conducted as now is provided by law for the holding of elections for county and Territorial officers; and, at the first election, all voters shall be entitled to vote.

SEC. 6. The clerks of election shall leave with each person elected, or at his usual place of residence, within five days after the election, a written notice of his election; and each person so notified shall, within ten days after the election, take the oath or affirmation hereinbefore mentioned, a certificate of which oath shall be deposited with the recorder, whose appointment is hereinafter provided for, and be by him preserved; and all subsequent elections shall be held, conducted and returns thereof be made as may be provided for by ordinance of the city council.

SEC. 7. The city council shall have authority to levy and collect taxes for city purposes upon all taxable property, real and personal, within the limits of the city, not exceeding one-half of one per cent. per annum upon the assessed value thereof; and may enforce the payment of the same, to be provided for by ordinance not repugnant to the Constitution of the United States or to the laws of this Territory.

SEC. 8. The city council shall have power to appoint a recorder, treasurer, assessor and collector, marshal and supervisor of streets. They shall also have the power to appoint all such other officers, by ordinance, as may be necessary, define the duties of all city officers and remove them from office at pleasure.

SEC. 9. The city council shall have power to require of all officers, appointed in pursuance of this act, bonds with security, for the faithful performance of their respective duties, and also to require of all officers, appointed as aforesaid, to take an oath for the faithful performance of the duties of their respective offices.

SEC. 10. The city council shall have power and authority to make, ordain, establish and execute all such ordinances, not repugnant to the Constitution of the United States or the laws of this Territory, as they may deem necessary for the peace, benefit, good order, regulation, convenience and cleanliness of said city; for the protection of property therein from destruction by fire or otherwise, and for the health and happiness of the inhabitants thereof; and shall have control of the water of the Beaver river: *Provided*, that such control shall not be exercised to the injury of any rights already acquired by actual settlers thereon; and shall have control of the water courses and mill privileges within said city; but in no case shall they interfere with the natural rights of others heretofore acquired in relation to water. They shall have power to fill all vacancies that may happen by death, resignation or removal, of any of the officers herein made elective; to fix and establish the fees of the officers of said corporation. The city council shall have power to divide the city into wards and specify the boundaries thereof.

SEC. 11. All ordinances passed by the city council shall, within ten days after they shall have been passed, be published in some newspaper printed in said city, or certified copies thereof be posted up in three of the most public places in the city. They shall not be in force until thus published or posted up.

SEC. 12. All ordinances of the city may be proven by the seal of the corporation affixed thereto; and, when published in book or pamphlet form, purporting to be printed or published by the authority of the corporation, the same shall be received in evidence in all courts and places without further proof.

SEC. 13. The justices of the peace of said city shall have all the powers of other justices of the peace, both in civil and criminal cases arising under the laws of the Territory. They shall perform the same duties, be governed by the same laws and give the same bonds and securities as other justices of the peace. They shall have exclusive jurisdiction in all cases arising under the ordinances of the corporation, and shall issue such process as may be necessary to carry such ordinances into execution. Appeals may be had from any decision or judgment of said justices, arising under the ordinances of said city, or the laws of the Territory, in the same manner as appeals are or may be taken from other justices of the peace.

SEC. 14. The mayor shall be chief executive officer of said corporation; he shall preside in the city council, and shall have power to veto any ordinance when not passed by four-fifths majority, and it shall be his duty to sign all city ordinances.

SEC. 15. This act shall be in force on and after the tenth day of February, one thousand eight hundred and sixty-seven, and may be amended or repealed at the pleasure of the Legislative Assembly.

An Act to amend an act entitled "An act to incorporate Beaver city in Beaver county," approved January 10, 1867.

[*Approved February 20, 1874.*]

SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That an act entitled "An act to incorporate Beaver city, in Beaver county," approved January 10th, 1867, be amended as follows:

That the city council of Beaver city, shall have power to license the manufacture, sale, or giving away, or otherwise disposing of alcoholic, vinous or fermented liquors, ale, beer or porter: *Provided*, that the license shall not exceed fifty dollars per month; to prohibit the sale, giving away, or otherwise disposing of any alcoholic, vinous, or fermented liquors, ale, beer or porter, to any minor or apprentice, without the consent of his, her or their parents, guardians, or to any Indian.

To prevent or prohibit the sale, giving away, or otherwise disposing of any alcoholic, vinous or fermented liquors, ale, beer, or porter on Sunday.

CHAPTER X.

OF INCORPORATED CITIES IN IRON COUNTY.

I. Parowan. II. Cedar.

I. PAROWAN.

An Act incorporating Parowan city, in Iron county.

[*Approved February* 13, 1868.]

SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That all that district of country embraced in the following boundaries in Iron county, to wit: Beginning at a point three hundred and twenty rods due south of the stone meeting house in Parowan, thence east two miles, thence north six miles, thence west six miles, thence south six miles, thence east four miles to the place of beginning, shall be known and designated under the name and style of Parowan city, and the inhabitants thereof are hereby constituted a body corporate and politic by the name aforesaid, and may have and use a common seal, which they may change and alter at pleasure.

SEC. 2. The inhabitants of said city, by the name and style aforesaid, shall have power to sue and be sued, to plead and be impleaded, defend and be defended in all courts of law and equity, and in all actions whatsoever; to purchase, receive and hold property, real and personal, in said city; to purchase, receive and hold real property beyond the city for burying grounds or for other public purposes for the use of the inhabitants of said said city; to sell, lease, convey or dispose of property real and personal for the benefit of said city; to improve and protect such property, and to do all other things in relation thereto as natural persons.

SEC. 3. There shall be a city council, to consist of a mayor and five councilors, who shall have the qualifications of electors of said city, and shall be chosen by the qualified voters thereof, and shall hold their offices for two years and until their successors shall be elected and qualified. The city council shall judge of the qualifications, elections and returns of their own members, and a majority of them shall form a quorum to do business; but a smaller number may adjourn from day to day, and compel the attendance of absent members under such penalties as may be prescribed by ordinance; there shall also be elected in like manner two justices of the peace, who shall have the qualifications of voters, be commissioned by the governor and have jurisdiction in all cases arising under the ordinances of the city.

SEC. 4. The mayor and councilors, before entering upon the duties of their offices, shall take and subscribe an oath or affirmation that they will support the Constitution of the United States and the laws of this Territory, and that they will well and truly perform all the duties of their offices to the best of their skill and abilities.

SEC. 5. One mayor and five councilors shall be elected biennially, and the first election under this act shall be at such time in said city as the probate judge of Iron county shall direct: *Provided*, said election shall be on or before the first Monday in August next. Said election shall be held and conducted as now is provided by law for the holding of elections for county and Territorial officers; and, at the said first election, all electors within said city limits shall be entitled to vote.

SEC. 6. The clerks of election shall leave with each person elected, or at his usual place of residence, within five days after the election, a written notice of his election; and each person so notified shall, within ten days after the election, take the oath or affirmation hereinbefore mentioned, a certificate of which oath shall be deposited with the recorder, whose appointment is hereinafter provided for, and be by him preserved; and all subsequent elections shall be held, conducted and returns thereof made as may be provided for by ordinance of the city council.

SEC. 7. The city council shall have authority to levy and collect taxes for city purposes upon all taxable property, real and personal, within the limits of the city, not exceeding one-half of one per cent. per annum upon the assessed value thereof; and may enforce the payment of the same in any manner to be provided by ordinance not repugnant to the Constitution of the United States or the laws of this Territory.

SEC. 8. The city council shall have power to appoint a recorder, treasurer, assessor and collector, marshal and supervisor of streets. They shall also have power to appoint all such other officers, by ordinance, as may be necessary, define the duties of all city officers and remove them from office at pleasure.

SEC. 9. The city council shall have power to require of all officers, appointed in pursuance of this act, bonds with security, for the faithful performance of their respective duties, and also to require of all officers, appointed as aforesaid, to take an oath for the faithful performance of the duties of their respective offices.

SEC. 10. The city council shall have power and authority to make, ordain, establish and execute all such ordinances, not repugnant to the Constitution of the United States or the laws of this Territory, as they may deem necessary for the peace, benefit, good order, regulation, convenience and cleanliness of said city; for the protection of property therein from destruction by fire or otherwise, and for the health and happiness of the inhabitants thereof; and shall have control of the water and water courses leading to the city: *Provided*, that such control shall not be exercised to the injury of any rights already acquired by actual settlers thereon; and shall have control of the water courses and mill privileges within said city; but in no case shall they interfere with the natural rights of others heretofore acquired in relation to water. They shall have power to fill all vacancies that may happen by death, resignation, removal or otherwise, of any of the officers herein made elective; to fix and establish the fees of the officers of said corporation. The city council shall have power to divide the city into wards and specify the boundaries thereof.

SEC. 11. All ordinances passed by the city council shall, within ten days after they shall have been passed, be published in some newspaper printed in said city, or certified copies thereof be posted up in three of the most public places in the city. They shall not be in force until thus published or posted up.

SEC. 12. All ordinances of the city may be proven by the seal of the corporation, and, when printed or published in book or pamphlet form, purporting to be printed or published by the authority of the corporation, the same shall be received in evidence in all courts and places, without further proof.

SEC. 13. The justices of the peace of said city shall have all the powers of other justices of the peace, both in civil and criminal cases arising under the laws of the Territory. They shall perform the same duties, be governed by the same laws, give the same bonds and securities as other justices of the peace. They shall have exclusive jurisdiction in all cases arising under the ordinances of the corporation, and shall issue such process as may be necessary to carry such ordinances into execution. Appeals may be had from any decision or judgment of said justices, arising under the ordinances of said city, or the laws of the Territory, in the same manner as appeals are or may be taken from other justices of the peace.

SEC. 14. The mayor shall be chief executive officer of said corporation; he shall preside in the city council, and shall have power to veto any ordinance when not passed by four-fifths majority, and it shall be his duty to sign all city ordinances.

SEC. 15. The city council shall have power to restrain, regulate or prohibit the running at large of cattle, horses, mules, sheep, swine, goats and all kinds of poultry; and to tax and regulate the keeping of dogs, and to authorize the destruction of the same when at large contrary to city ordinance.

SEC. 16. To license, regulate, prohibit or restrain the manufacturing, selling or giving away of spirituous, vinous or fermented liquors; [to tax and regulate] tavern keepers, dram or tippling shop keepers, boarding, victualing, or coffee houses, restaurants, saloons or other houses or places for the selling or giving away of ardent, vinous or fermented liquors.

SEC. 17. The city council shall have exclusive power, by ordinance, to regulate the police of the city; to license, tax and regulate auctioneers, merchants and retailers; to license, tax and regulate theatrical and other exhibitions, shows and amusements; to prohibit and suppress gaming, bawdy and other disorderly houses.

SEC. 18. This act shall be in force on and after the tenth day of April, one thousand eight hundred and sixty-eight, and may be amended or repealed at the pleasure of the Legislative Assembly.

II. CEDAR.

An Act incorporating Cedar city, in Iron county.

[*Approved February* 18, 1868.]

SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That all that portion of Iron county situated within the following boundaries, to wit: Beginning at the mouth of Coal Creek cañon, thence north three miles, thence west six miles, thence south six miles, thence east six miles, thence north three miles to the place of beginning, shall be known and designated under the name and style of Cedar city; and the inhabitants thereof are hereby constituted a body corporate and politic by the name and style aforesaid, and shall have perpetual succession and may have and use a common seal, which they may change and alter at pleasure.

SEC. 2. The inhabitants of said city, by the name and style aforesaid, shall have power to sue and be sued, to plead and be impleaded, defend and be defended in all courts of law and equity and in all actions whatsoever; to purchase, receive and hold property, real and personal, in said city; to purchase, receive and hold real property beyond the city for burying grounds and other public purposes for the use of the inhabitants of said city, to sell, lease, convey or dispose of property, real and personal, for the benefit of said city; to improve and protect such property, and to do all other things in relation thereto as natural persons.

SEC. 3. There shall be a city council, to consist of a mayor, and five councilors, who shall have the qualifications of electors of said city, and shall be chosen by the qualified voters thereof, and shall hold their offices for two years, and until their successors shall be elected and qualified. The city council shall judge of the qualifications, elections and returns of their own members, and a majority of them shall form a quorum to do business; but a smaller number may adjourn from day to day and compel the attendance of absent members, under such penalties as may be prescribed by ordinance; there shall also be elected in like manner two justices of the peace, who shall have the qualifications of voters, be commissioned by the governor, and have jurisdiction in all cases arising under the ordinances of the city.

SEC. 4. The mayor and councilors, before entering upon the duties of their offices shall take and subscribe an oath or affirmation that they will support the Constitution of the United States and laws of this Territory, and that they will well and truly perform all the duties of their offices to the best of their skill and abilities.

SEC. 5. One mayor and five councilors shall be elected biennially, and the first election under this act shall be at such time in said city, as the probate judge of Iron county shall direct: *Provided*, said election shall be on or before the first Monday in August next. Said election shall be held and conducted as now is provided by law for the holding of elections for county and Territorial officers; and, at the said first election, all electors within said city limits, shall be entitled to vote.

SEC. 6. Tho clerks of election shall leave with each person elected, or at his usual place of residence, within five days after the election, a written notice of his election; and each person so notified shall, within ten days after the election, take the oath or affirmation hereinbefore mentioned, a certificate of which oath shall be deposited with the recorder, whose appointment is hereinafter provided for, and be by him preserved; and all subsequent elections shall be held, conducted and returns thereof made as may be provided for by ordinance of the city council.

SEC. 7. The city council shall have authority to levy and collect taxes for city purposes upon all taxable property, real and personal, within the limits of the city, not exceeding one-half of one per cent. per annum upon the assessed value thereof; and may enforce the payment of the same, to be provided for by ordinance not repugnant to the Constitution of the United States or to the laws of this Territory.

SEC. 8. The city council shall have power to appoint a recorder, treasurer, assessor and collector, marshal and supervisor of streets. They shall also have the power to appoint all such other officers, by ordinance, as may be necessary, define the duties of all city officers, and remove them from office at pleasure.

SEC. 9. The city council shall have power to require of all officers, appointed in pursuance of this act, bonds with security, for the faithful performance of their respective duties, and also to require of all officers, appointed as aforesaid, to take an oath for the faithful performance of the duties of their respective offices.

SEC. 10. The city council shall have power and authority to make, ordain, establish and execute all such ordinances, not repugnant to the Constitution of the United States or the laws of this Territory, as they may deem necessary for the peace, benefit, good order, regulation, convenience and cleanliness of said city; for the protection of property therein from destruction by fire or otherwise, and for the health and happiness of the inhabitants thereof; and shall have control of the water and water courses leading to the city: *Provided*, that such control shall not be exercised to the injury of any rights already acquired by actual settlers thereon; and shall have control of the water courses and mill privileges within said city, but in no case shall they interfere with the natural rights of others heretofore acquired in relation to water. They shall have power to fill all vacancies that may happen by death, resignation, removal or otherwise in any of the offices herein made elective; to fix and establish the fees of the officers of said corporation. The city council shall have power to divide the city into wards and specify the boundaries thereof.

SEC. 11. All ordinances passed by the city council shall, within ten days after they shall have been passed, be published in some newspaper printed in said city, or certified copies thereof be posted up in three of the most public places in the city. They shall not be in force until thus published or posted up.

SEC. 12. All ordinances of the city may be proven by the seal of the corporation affixed thereto; and, when printed or published in book or pamphlet form, purporting to be printed or published by the authority of the corporation, the same shall be received in evidence in all courts and places, without further proof.

SEC. 13. The justices of the peace of said city shall have all the powers of other justices of the peace, both in civil and criminal cases arising under the laws of the Territory. They shall perform the same duties, be governed by the same laws, and give the same bonds and securities as other justices of the peace. They shall have exclusive jurisdiction in all cases arising under the ordinances of the corporation, and shall issue such process as may be necessary to carry such ordinances into execution. Appeals may be had from any decision or judgment of said justices, arising under the ordinances of said city, or the laws of the Territory, in the same manner as appeals are or may be taken from other justices of the peace.

SEC. 14. The mayor shall be the chief executive officer of said corporation; he shall preside in the city council, and shall have power to veto any ordinance when not passed by four-fifths majority, and it shall be his duty to sign all city ordinances.

SEC. 15. The city council shall have power to restrain, regulate or prohibit the running at large of cattle, horses, mules, sheep, swine, goats and all kinds of poultry; and to tax and regulate the keeping of dogs, and to authorize the destruction of the same, when at large contrary to city ordinance.

SEC. 16. To license, regulate, prohibit or restrain the manufacturing, selling or giving away of spirituous, vinous or fermented liquors; [to license and regulate] tavern keepers, dram or tippling shop keepers, boarding, victualing or coffee houses, restaurants, saloons or other houses or places for the selling or giving away of ardent, vinous or fermented liquors.

SEC. 17. The city council shall have exclusive power, by ordinance, to regulate the police of the city; to license, tax and regulate auctioneers, merchants and retailers; to license, tax and regulate theatrical and other exhibitions, shows and amusements; to prohibit and suppress gaming, bawdy and other disorderly houses.

SEC. 18. This act shall be in force on and after the 10th day of April 1868, and may be amended or repealed at the pleasure of the Legislative Assembly.

SEC. 19. This act shall not invalidate any act done by the present city council of Cedar city or by its officers, nor divest their successors under this act of any [right, property or otherwise, or liability which may have accrued to or been created by said council prior to the passage of this act.

CHAPTER XI.

OF INCORPORATED CITIES IN WASHINGTON COUNTY.

I. St. George. II. Washington.

I. ST. GEORGE.

An Act to incorporate the city of Saint George, in Washington county.

[*Approved January* 17, 1862.]

SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That all that portion of country situated within the following boundaries, to wit: Beginning at the first point of rocks below the mouth of the Santa Clara and on the west bank of the Rio Virgen, in the county of Washington; thence, running due west two and a half miles; thence, due north five miles; thence, due east five miles; thence, due south five miles; thence, due west two and a half miles to the place of beginning shall be known and designated by the name of the "city of St. George," and the inhabitants thereof are hereby constituted a body corporate and politic by the name aforesaid; and may have and use a common seal, which they may change and alter at pleasure.

SEC. 2. The inhabitants of said city, by the name and style aforesaid, shall have power to sue and be sued, to plead and be impleaded, defend and be defended in all courts of law and equity and in all actions whatsoever; to purchase, receive and hold property, real and personal, in said city; to purchase, receive and hold real property beyond the city for burying grounds or other public purposes for the use of the inhabitants of said city; to sell, lease, convey or dispose of property, real and personal, for the benefit of said city; to improve and protect such property, and to do all other things in relation thereto, as natural persons.

SEC. 3. There shall be a city council to consist of a mayor, two aldermen, and five (1) councilors, who shall have the qualifications of electors of said city, and shall be chosen by the qualified voters thereof, and shall hold their offices for two years, and until their successors shall be elected and qualified. The city council shall judge of the qualifications, elections and returns of their own members, and a majority of them shall form a quorum to do business; but a smaller number may adjourn from day to day and compel the attendance of absent members, under such penalties as may be prescribed by ordinance.

SEC. 4. The mayor, aldermen and councilors, before entering upon the duties of their offices, shall take and subscribe an oath or affirmation that they will support the Constitution of the United States and the laws of this Territory, and that they will well and truly perform all the duties of their offices to the best of their skill and abilities.

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(1) As amended Feb. 21, 1868.

Sec. 5. One mayor, two aldermen and five (1) councilors shall be elected biennially, and the first election under this act shall be at such time and place as the probate judge of Washington county shall direct: *Provided*, said election shall be on or before the first Monday in August next. Said election shall be held and conducted as is now provided by law for the holding of elections for county and Territorial officers; and, at the said first election, all residents, over twenty-one years of age, within said city limits, shall be entitled to vote.

Sec. 6. The clerks of election shall leave with each person elected, or at his usual place of residence, within five days after the election, a written notice of his election, and each person so notified shall, within ten days after the election, take the oath or affirmation hereinbefore mentioned, a certificate of which oath shall be deposited with the recorder, whose appointment is hereinafter provided for, and be by him preserved; and all subsequent elections shall be held, conducted, and returns thereof made, as may be provided for by ordinance of the city council.

Sec. 7. The city council shall have authority to levy and collect taxes, for city purposes, upon all taxable property, real and personal, within the limits of the city, not exceeding one-half of one per cent. per annum upon the assessed value thereof; and may enforce the payment of the same in any manner to be provided by ordinance, not repugnant to the Constitution of the United States or the laws of this Territory.

Sec. 8. The city council shall have power to appoint a recorder, treasurer, assessor and collector, marshal and supervisor of streets. They shall also have the power to appoint all such other officers, by ordinance, as may be necessary, define the duties of all city officers and remove them from office at pleasure.

Sec. 9. The city council shall have power to require of all officers, appointed in pursuance of this act, bonds with security, for the faithful performance of their respective duties, and also to require of all officers, appointed as aforesaid, to take an oath for the faithful performance of the duties of their respective offices.

Sec. 10. The city council shall have power and authority to make, ordain, establish and execute all such ordinances, not repugnant to the Constitution of the United States or the laws of this Territory, as they may deem necessary for the peace, benefit, good order, regulation, convenience and cleanliness of said city; for the protection of property therein from destruction by fire or otherwise, and for the health and happiness thereof, and shall have control of the waters of the Santa Clara: *Provided*, that such control shall not be exercised to the injury of any rights already acquired by actual settlers thereon, and shall have control of the water courses and mill privileges within said city. They shall have power to fill all vacancies that may happen by death, resignation or removal in any of the offices herein made elective; to fix and establish the fees of the officers of said corporation; to impose such fines, not exceeding one hundred dollars, and imprisonment not exceeding six months, for each offense, for the breach or violation of any city ordinance; to divide the city into wards and specify the boundaries thereof.

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(1) As amended Feb. 21, 1868.

SEC. 11. All ordinances passed by the city council shall, within one month after they shall have been passed, be published in some newspaper printed in said city, or certified copies thereof be posted up in three of the most public places in the city.

SEC. 12. All ordinances of the city may be proven by the seal of the corporation; and, when printed or published in book or pamphlet form, purporting to be printed or published by the authority of the corporation, the same shall be received in evidence in all courts and places, without further proof.

SEC. 13. The mayor and aldermen shall have all the powers of justices of the peace, both in civil and criminal cases arising under the laws of the Territory. They shall, as justices of the peace within the limits of said city, perform the same duties, be governed by the same laws, give the same bonds and securities as other justices of the the peace in and for said city, and be commissioned by the governor.

SEC. 14. The mayor and aldermen shall have exclusive jurisdiction in all cases arising under the ordinances of the corporation; and shall issue such process as may be necessary to carry said ordinances into execution and effect. Appeals may be had from any decision or judgment of said mayor or aldermen, arising under the ordinances of said city, in the same manner as appeals are, or may be taken from justices of the peace.

SEC. 15. The city council shall have power to restrain, regulate or prohibit the running at large of cattle, horses, mules, sheep, swine, goats and all kinds of poultry; and to tax and regulate the keeping of dogs, and to authorize the destruction of the same when at large contrary to city ordinance.

SEC. 16. To license, regulate, prohibit or restrain the manufacturing, selling or giving away of spirituous, vinous or fermented liquors, [to license and regulate] tavern keepers, dram or tippling shop keepers, boarding, victualing or coffee houses, restaurants, saloons or other houses or places for the selling or giving away of ardent, vinous or fermented liquors.

SEC. 17. This act shall be in force on and after the tenth day of February, 1862, and may be amended or repealed at the pleasure of the Legislative Assembly.

An Act amendatory and supplementary to the charter of St. George city.

[*Approved February* 21, 1868.]

SEC. 1. (1)

SEC. 2. The city council shall have power within the city by ordinance, to annually levy and collect of each male inhabitant between the ages of eighteen and sixty years, one day's work, or in default thereof two dollars lawful money, to be applied upon the streets and water sects of said city: *Provided*, that owners of city lots, drawing water from the public sects for irrigating the same may for each and every lot so irrigating, be taxed not exceeding the amount specified in this section, to be used in making, cleaning and repairing sects, and street crossings or otherwise supplying the city with water, but owners so taxed shall not be liable to the tax first authorized in this section. (1)

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(1) Amended sections three and five of act of Jan. 17, 1862, and is inserted therein.

SEC. 3. To make regulations to prevent the introduction of contagious diseases into the city; to make quarantine laws and enforce the same within the city and around it, not exceeding twelve miles next beyond the boundaries thereof; to establish, erect and control hospitals, infirmaries and medical colleges; to purchase grounds for their erection, and improve and adorn the same; and license, control and regulate physicians and surgeons.

SEC. 4. To forbid the selling or giving away of any ardent spirits, or other intoxicating liquors, to any child, apprentice or servant without the consent of his or her parent, guardian, master or mistress, or to any Indian.

SEC. 5. To license, tax, regulate, suppress or prohibit billiard tables, nine or ten pin alleys or table and ball alleys; to suppress or restrain all disorderly houses and groceries; to authorize the destruction and demolition of all instruments and devices used for the purpose of gambling; to prevent any riot, noise, disturbance or disorderly assemblage; to restrain and punish vagrants, mendicants, street beggars and prostitutes.

SEC. 6. To regulate, license, suppress or prohibit all exhibitions of common showmen, shows of every kind, concerts or other musical entertainments, exhibitions of natural or artificial curiosities, caravans, circuses, theatrical performances, ball rooms and all other exhibitions and amusements.

SEC. 7. To prevent horse racing, immoderate riding or driving in the streets, and to authorize their being stopped by any person; to punish or prohibit the abuse of animals; to compel persons to put up posts in front of their lots to fasten their horses or other animals to; to compel the fastening of horses, mules, oxen or other animals attached to vehicles while standing or remaining in the streets.

SEC. 8. To compel the owner or occupant of any grocery, cellar, tallow chandler shop, soap factory, tannery, stable, barn, privy, sewer or any unwholesome place to cleanse, remove or abate the same from time to time, as often as may be necessary for the health, comfort and convenience of the inhabitants of said city.

SEC. 9. To direct the location and management of and regulate breweries, and to direct the location, management and construction of and restrain or prohibit within the city distilleries, slaughtering establishments, and establishments for steaming and rendering lard, oil, tallow, offal and such other substances as can or may be rendered; and all establishments or places where nauseous, offensive or unwholesome business may be carried on.

SEC. 10. To define and declare what are nuisances, and to authorize and direct the summary abatement thereof, and punish the authors by fine or imprisonment.

SEC. 11. To control, regulate, repair, amend and clear the streets, bridges, alleys, sidewalks or crosswalks; and open, widen, straighten or vacate streets and alleys, and put drains or ditches and sewers therein; and prevent the incumbering of the streets in any manner and protect the same from any encroachment and injury.

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(1) As amended Feb. 18, 1870.

SEC. 12. To lay out, improve and regulate the public grounds belonging to the city; to direct and regulate the planting and preserving trees in the streets and public grounds; and to regulate the fencing of lots within the bounds of the city.

SEC. 13. To grant and issue licenses, and direct the manner of issuing and registering thereof and the fees to be paid therefor. Bonds may be taken on the granting of licenses for the due observance of the ordinances or regulations of the city council.

SEC. 14. To license, tax and regulate merchants and retailers, auctioneers, distillers, brewers, brokers, pawnbrokers and money changers.

SEC. 15. To license, tax, regulate or suppress hawkers, peddlers and butchers; and to revoke any and all licenses, for malconduct in the course of trade.

SEC. 16. To establish, govern and regulate markets and other public buildings, provide for their erection and determine their location, and to provide for the erection of all needful buildings for the use of the city and for inclosing, improving and regulating all public grounds belonging to the city.

SEC. 17. To provide for taking the enumeration of the inhabitants of the city; to regulate the burial of the dead, and registration of births and deaths; to direct the returning and keeping of bills of mortality; and to impose penalties on physicians, sextons and others for any default in the premises.

SEC. 18. To appoint watchmen and policemen, and prescribe their duties and powers.

SEC. 19. To regulate the measuring and inspection of lumber, shingles, timber, posts, staves and heading, and all building materials and all kinds of mechanical work, and appoint one or more inspectors therefor.

SEC. 20. To regulate the inspection of whisky and other liquors to be sold in barrels, hogsheads or other vessels; to appoint inspectors, weighers and gaugers, and regulate their duties and prescribe their fees.

SEC. 21. To require every merchant, retailer, trader and dealer in merchandise or property of any description, which is sold by measure or weight, to cause their weights and measures to be sealed by the city sealer, and to be subject to his inspection; the standard of which weights and measures shall be conformable to those established by law.

SEC. 22. To establish, make and regulate public pumps, wells, cisterns, hydrants and reservoirs; to distribute, control and so regulate the waters flowing into the city, as may be most advantageous, and to prevent waste of water or damage to streets or other property.

SEC. 23. To borrow money on the credit of the city: *Provided*, that the interest on the aggregate of all sums borrowed and outstandins shall not exceed one-fourth of the city revenue arising from taxes assessed within the corporation during the preceding year.

SEC. 24. The city council shall have power, from time to time, to require further and other duties of all officers whose duties are herein provided; and prescribe the duties and powers of all officers whose duties are not herein specifically mentioned, and arrange the fees and fix the compensation of all officers, jurors, witnesses and others.

Sec. 25. The city council shall have power to provide for the punishment of offenders and vagrants by imprisonment in the city or county jail, or by compelling them to labor on the streets or other public works until the judgment rendered against them shall be fully satisfied in all cases where such offender or vagrant shall fail or refuse to pay the fines and forfeitures which may be recovered against them.

Sec. 26. If any person, having been an officer in St. George city, shall not within ten days after notification and request, deliver to his successor in office all the property, papers and effects of every description in his possession belonging to said city or appertaining to the office he held, he shall forfeit and pay for the use of the city not exceeding one hundred dollars besides all damages; caused by his neglect or refusal to so deliver.

Sec. 27. When it shall be necessary to take private property for opening, widening or altering any public street, lane, avenue or alley, the corporation shall make a just compensation therefor to the person whose property is so taken; and if the amount of such compensation cannot be agreed upon, the mayor shall cause the same to be ascertained by a jury of six disinterested men, who shall be inhabitants of the city. All jurors impaneled to inquire into the amount of benefit or damage that shall happen to the owners of property so proposed to be taken, shall first be sworn to that effect, and shall return to the mayor or presiding officer of the city council, their inquest in writing signed by each juror.

Sec. 28. The cemetery lots which have been or may hereafter be laid out and sold by said city for private places of burial, shall, with their appurtenances, forever be exempt from taxation, execution or attachment.

Sec. 29. All ordinances, resolutions and regulations now in force in St. George city and not inconsistent with this act, shall remain in force until altered, modified or repealed by the city council after this act shall take effect.

Sec. 30. All plots and surveys of lands, lots or other places within said city, heretofore surveyed by the surveyor, and all plots and surveys of lands, lots or other places that may hereafter be surveyed and all certificates of surveys given by him shall be deemed valid in law by this act.

Sec. 31. This act shall be deemed a public act and may be read in evidence without proof, and judicial notice shall be taken thereof in all courts and places.

Sec. 32. This act shall not invalidate any act heretofore done by the city council of St. George city, or by its officers, nor divest their successors under this act of any rights, property or otherwise, or liability which may have accrued to or been created by said council prior to the passage of this act.

Sec. 33. All officers of the city created conservators of the peace shall have power to arrest or cause to be arrested, with or without process, all persons who shall break the peace; commit for examination, and, if necessary, detain such person in custody forty-eight hours in the city prison or other safe place; and shall have and exercise such other powers as conservators of the peace, as the city council may prescribe.

SEC. 34. Nothing in this act shall be construed as to deprive the city council of St. George city of any power or authority, conferred upon them by the act incorporating said city; but said city council shall possess, exercise and enjoy all the powers and authority heretofore conferred upon them, except so far as such powers and authority have been expressly modified or repealed by this act.

II. WASHINGTON.

An Act incorporating Washington city, in Washington county.

[*Approved February* 18, 1870.]

SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That all that district of country embraced in the following boundaries in Washington county, to wit: Beginning at the north-east corner of the city of St. George, thence east four miles, thence south five miles, thence west four miles, thence north along the east boundary of St. George, to the place of beginning shall be known and designated under the name and style of Washington city, and the inhabitants thereof are hereby constituted a body corporate and politic, by the name aforesaid, and may have and use a common seal, which they may change and alter at pleasure.

SEC. 2. The inhabitants of said city by the name and style aforesaid, shall have power to sue and be sued, to plead and be impleaded, defend and be defended in all courts of law and equity, and in all actions whatsoever; to purchase, receive and hold property, real and personal in said city; to purchase, receive and hold real property beyond the city for burying grounds or for other public purposes for the use of the inhabitants of said city; to sell, lease, convey or dispose of property, real and personal for the benefit of said city; to improve and protect such property, and to do all other things in relation thereto as natural persons.

SEC. 3. There shall be a city council, to consist of a mayor and six councilors, who shall have the qualifications of electors of said city, and shall be chosen by the qualified voters thereof, and shall hold their offices for two years and until their successors shall be elected and qualified. The city council shall judge of the qualifications, elections and returns of their own members, and a majority of them shall form a quorum to do business; but a smaller number may adjourn from day to day, and compel the attendance of absent members, under such penalties as may be prescribed by ordinance; there shall also be elected in like manner, two justices of the peace, who shall have the qualifications of voters, be commissioned by the governor, and have jurisdiction in all cases arising under the ordinances of the city.

SEC. 4. The mayor and councilors before entering on the duties of their offices, shall take and subscribe an oath or affirmation that they will support the Constitution of the United States, and the laws of this Territory, and that they they will well and truly perform all the duties of their offices, to the best of their abilities.

SEC. 5. A mayor and six councilors shall be elected biennially, and the first election under this act shall be at such times in said city, as the probate judge of Washington county shall direct: *Provided*, said election shall be on or before the first Monday in August, next. Said election shall be held and conducted as now is provided by law for the holding of elections for county and Territorial officers; and at the said first election, all electors within said city limits shall be entitled to vote.

SEC. 6. The clerks of election shall leave with each person elected, or at his usual place of residence, within five days after the election, a written notice of his election, and each person so notified, shall, within ten days after the election, take the oath or affirmation hereinbefore mentioned, a certificate of which oath shall be deposited with the recorder, whose appointment is hereinafter provided for, and be by him preserved; and all subsequent elections shall be held, conducted, and returns thereof made as may be provided for by ordinance of the city council. In case a majority of the members elect shall refuse or neglect to qualify within the specified time, the probate judge shall order another election to fill such vacancies.

SEC. 7. The city council shall have authority to levy and collect taxes for city purposes upon all taxable property, real and personal, within the limits of the city, not exceeding one-half of one per cent. per annum upon the assessed value thereof, and may enforce the payment of the same in any manner, to be provided by ordinance, not repugnant to the Constitution of the United States or the laws of this Territory, and shall also be authorized to assess and collect a poll tax of one day's work, or in lieu thereof, two dollars in cash for each able-bodied man between the ages of eighteen and sixty years, to be applied upon the streets and water sects of said city.

SEC. 8. The city council shall have power to appoint a recorder, treasurer, assessor and collector, marshal and supervisor of streets. They shall also have power to appoint all such other officers, by ordinance, as may be necessary; define the duties of all city officers and remove them from office at pleasure.

SEC. 9. The city council shall have power to require of all officers appointed in pursuance of this act, bonds with security, for the faithful performance of their respective duties; and also to require of all other officers, appointed as aforesaid, to take an oath for the faithful performance of the duties of their respective offices.

SEC. 10. The city council shall have power and authority, to make, ordain, establish and execute all such ordinances, not repugnant to the Constitution of the United States or the laws of this Territory, as they may deem necessary for the peace, benefit, good order, regulation and cleanliness of said city, for the protection of property therein from destruction by fire or otherwise, and for the health and happiness of the inhabitants thereof; and shall have control of the water and water courses leading to the city: *Provided,* that such control shall not be exercised to the injury of any rights already acquired by actual settlers thereon; and shall have control of the water courses and mill privileges within said city, but in no case shall they interfere with the natural rights of others heretofore acquired in relation to water. They shall have power to fill all vacancies that may happen by death, resignation, removal or otherwise, of any of the officers herein made elective; to fix and establish the fees of the officers of said corporation. The city council shall have power to divide the city into wards, and specify the boundaries thereof.

SEC. 11. All ordinances passed by the city council shall, within ten days after they shall have been passed, be published in some newspaper printed in said city, or certified copies thereof be posted in three of the most public places in the city. They shall not be in force until thus posted or published.

SEC. 12. All ordinances of the city may be proven by the seal of the corporation, and when printed or published in book or pamphlet form, purporting to be printed or published by the authority of the corporation, the same shall be received in evidence in all courts and places without further proof.

SEC. 13. The justices of the peace of said city, shall have all the powers of other justices of the peace, both in civil and criminal cases arising under the laws of the Territory. They shall perform the same duties, be governed by the same laws, give the same bonds and securities as other justices of the peace. They shall have exclusive original jurisdiction in all cases arising under the city ordinances, and shall issue such process as shall be necessary to carry said ordinances into execution. Appeals may be had from any decision or judgment of said justices arising under the ordinances of said city, or the laws of the Territory, in the same manner as appeals are or may be taken from other justices of the peace.

SEC. 14. The mayor shall be the chief executive officer of said corporation. He shall preside in the city council, and shall have power to veto any ordinance when not passed by two-thirds majority, and it shall be his duty to sign all city ordinances.

SEC. 15. The city council shall have power to restrain, regulate or prohibit the running at large of cattle, horses, mules, sheep, swine, goats and all kinds of poultry; and to tax and regulate the keeping of dogs, and to authorize the destruction of the same when at large contrary to city ordinances.

SEC. 16. To license, regulate, prohibit or restrain the manufacturing, selling, or giving away of spirituous, vinous, or fermented liquors; [to license and regulate] tavern keepers, dram shop keepers, victualing or coffee houses, restaurants, saloons, or other houses or places for the selling or giving away of ardent, vinous or fermented liquors.

SEC. 17. The city council shall have exclusive power by ordinance to regulate the police of the city, to license, tax and regulate auctioneers, shows and amusements; to prohibit and suppress gaming, bawdy and other disorderly houses.

SEC. 18. This act shall be in force on and after the tenth day of April, one thousand eight hundred and seventy, and may be amended or repealed at the pleasure of the Legislative Assembly.

CHAPTER XII.

OF INCORPORATED CITIES IN SANPETE COUNTY.

I. Manti.
II. Ephraim.
III. Moroni.
IV. Mount Pleasant.
V. Spring City.
VI. Fairview.

I. MANTI.

An ordinance to incorporate the city of Manti.

[*Approved February* 6, 1851.]

SEC. 1. *Be it ordained by the General Assembly of the State of Deseret:* That all that portion of the county of Sanpete which lies in the following boundaries, to wit: Commencing at the mouth of Six Mile Creek cañon, thence west along the south bank of said creek to the base of mountain at its mouth, thence north along the base of West Mountain to Ax-helve cañon, thence on an easterly line to the north-east corner of Manti meadow, connecting with the south-east corner of Ephraim meadow, thence continuing on an easterly line to where the county road leading from Manti to Ephraim crosses Willow creek, thence along the centre of the channel of said creek to the mouth of the cañon, giving one-half of the waters of said creek to Manti city and the other half to the settlement of Fort Ephraim, thence south to a parallel line due east of the aforesaid mouth of Six Mile Creek cañon, thence west to the place of beginning, shall be known and designated as the city of Manti; and the inhabitants thereof are hereby constituted a body corporate and politic by the name aforesaid; and shall have perpetual succession, and may have and use a common seal, which they may change and alter at pleasure. (1)

SEC. 2. The inhabitants of said city, by the name and style aforesaid, shall have power to sue and be sued, to plead and be impleaded, defend and be defended, in all courts of law and equity and in all actions whatsoever; to purchase, receive and hold property, real and personal, in said city; to purchase, receive and hold real property beyond the city for burying grounds or other public purposes for the use of the inhabitants of said city; to sell, lease, convey or dispose of property, real and personal, for the benefit of said city; to improve and protect such property, and to do all other things in relation thereto, as natural persons.

SEC. 3. There shall be a city council, to consist of a mayor, two aldermen, and three councilors, who shall have the qualifications of electors of said city, and shall be chosen by the qualified voters thereof, and shall hold their offices for two years, and until their successors shall be elected and qualified. The city council shall judge of the qualifications, elections and returns of their own members, and a majority of them shall form a quorum to do business; but a smaller number may adjourn from day to day and compel the attendance of absent members, under such penalties as may be prescribed by ordinance.

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(1) As amended Jan. 19 1866.

SEC. 4. The mayor, aldermen and councilors, before entering upon the duties of their offices, shall take and subscribe an oath or affirmation that they will support the Constitution of the United States and of this State, and that they will well and truly perform all the duties of their offices to best of their skill and abilities.

SEC. 5. An election, for the election of one mayor, two aldermen and three councilors, shall be held on the second Monday of February, eighteen hundred and sixty-three, and every two years thereafter; and shall be held, conducted and returns thereof made in such manner as shall be provided for by the ordinances of the city council.

SEC. 6. All inhabitants of the age of eighteen [twenty-one] years, who are entitled to vote for State officers, and who shall have been actual residents of said city sixty days next preceding said election, shall be entitled to vote for city officers.

SEC. 7. The city council shall have authority to levy and collect taxes for city purposes upon all taxable property, real and personal, within the limits of the city, not exceeding one-half [of one] per cent. per annum, upon the assessed value thereof, and may enforce the payment of the same in any manner to be provided by ordinance, not repugnant to the Constitution of the United States, or of this State.

SEC. 8. The city council shall have power to appoint a recorder, treasurer, assessor and collector, marshal and supervisor of streets. They shall also have the power to appoint all such other officers, by ordinance, as may be necessary, define the duties of all city officers, and remove them from office at pleasure.

SEC. 9. The city council shall have power to require of all officers appointed in pursuance of this ordinance, bonds with penalty and security, for the faithful performance of their respective duties, such as may be deemed expedient, and also to require of all officers, appointed as aforesaid, to take an oath for the faithful performance of the duties of their respective offices.

SEC. 10. The city council shall have power and authority to make, ordain, establish and execute all such ordinances, not repugnant to the Constitution of the United States or of this State, as they may deem necessary for the peace, benefit, good order, regulation, convenience and cleanliness of said city, for the protection of property therein, from destruction by fire or otherwise, and for the health and happiness thereof. They shall have power to fill all vacancies that may happen, by death, resignation or removal, in any of the offices herein made elective; to fix and establish all the fees of the officers of said corporation, not herein established; to impose such fines, not exceeding one hundred dollars for each offense, as they may deem just, for refusing to accept of any office in or under the corporation, or for misconduct therein; to divide the city into wards and specify the boundaries thereof.

SEC. 11. To establish, support and regulate common schools; to borrow money on the credit of the city: *Provided*, that no sum or sums of money be borrowed on a greater interest than six per cent. per annum, nor shall the interest on the aggregate of all the sums borrowed and outstanding ever exceed one-half the city revenue arising from taxes assessed on real estate within this corporation.

SEC. 12. To make regulations to prevent the introduction of contagious diseases into the city; to make quarantine laws for that purpose and enforce the same.

SEC. 13. To appropriate and provide for the payment expenses and debts of the city.

SEC. 14. To establish hospitals and make regulations for the government of the same; to make regulations to secure the general health of the inhabitants; to declare what shall be nuisances and to prevent and remove the same.

SEC. 15. To provide the city with water; to dig wells, lay pump logs and pipes and erect pumps in the streets for the extinguishment of fires and convenience of the inhabitants.

SEC. 16. To open, alter, widen, extend, establish, grade, pave or otherwise improve and keep in repair, streets, avenues, lanes and alleys; and to establish, erect and keep in repair aqueducts and bridges.

SEC. 17. To provide for the lighting of the streets and erecting lamp posts; and establish, support and regulate night watches; to erect market houses, establish markets and market places and provide for the government and regulation thereof.

SEC. 18. To provide for erecting all needful buildings for the use of the city, and for enclosing, improving and regulating all public grounds belonging to the city.

SEC. 19. To license, tax and regulate auctioneers, merchants and retailers, grocers and taverns, ordinaries, hawkers, peddlers, brokers, pawnbrokers and money changers.

SEC. 20. To license, tax and regulate hacking, carriages, wagons, carts and drays; and fix the rates to be charged for the carriage of persons and for wagonage, cartage and drayage of property; as also to license and regulate porters and fix the rates of porterage.

SEC. 21. To license, tax, and regulate theatricals and other exhibitions, shows and amusements.

SEC. 22. To tax, restrain, prohibit and suppress tippling houses, dram shops, gaming houses, bawdy and other disorderly houses.

SEC. 23. To provide for the prevention and extinguishment of fires; to regulate the fixing of chimneys and the flues thereof and stove pipes, and to organize and establish fire companies.

SEC. 24. To regulate the storage of gunpowder, tar, pitch, rosin and other combustible materials.

SEC. 25. To regulate and order parapet walls and other partition fences; to restrain, regulate or prohibit the running at large of cattle, horses, mules, sheep, swine, goats and all kinds of poultry; and to tax and regulate the keeping of dogs and to authorize the destruction of the same when at large contrary to city ordinances.

SEC. 26. To establish standard weights and measures, and regulate the weights and measures to be used in the city, in all cases not provided for by law.

SEC. 27. To provide for the inspection and measuring of lumber and other building materials, and for the measurement of all kinds of mechanical work.

SEC. 28. To provide for the inspection and weighing of hay, lime and stone coal, and the measuring of charcoal, firewood and other fuel to be sold or used within the city.

SEC. 29. To license, regulate, prohibit or restrain the manufacturing, selling or giving away of spirituous, vinous or fermented liquors, [to license and regulate] tavern keepers, dram or tippling shop keepers, boarding, victualing or coffee houses, restaurants, saloons or other houses or places for the selling or giving away of ardent, vinous or fermented liquors; to provide for and regulate the inspection of tobacco, beef, pork, flour and meal; also beer, whisky, brandy and all other spirituous and fermented liquors.

SEC. 30. To regulate the weight, quality and price of bread sold and used in the city.

SEC. 31. To provide for taking the enumeration of the inhabitants of the city.

SEC. 32. To fix the compensation of all city officers, and regulate the fees of jurors, witnesses and others for services rendered under this or any city ordinance.

SEC. 33. The city council shall have exclusive power within the city, by ordinance, to license, regulate, suppress or restrain billiard tables, and from one to twenty pin alleys and every other description of gaming or gambling.

SEC. 34. The city council shall have exclusive power within the city, by ordinance, to license, regulate or restrain the keeping of ferries and toll bridges; to regulate the police of the city; to impose fines, forfeitures and penalties for the breach of any ordinance, and provide for the recovery of such fines and forfeitures, and the enforcement of such penalties; and to pass such ordinances as may be necessary and proper for carrying into effect and execution the powers specified in this ordinance: *Provided*, that such ordinances are not repugnant to the Constitution of the United States or of this State.

SEC. 35. All ordinances passed by the city council shall, within one month after they shall have been passed, be published in some newspaper, printed in said city, or certified copies thereof be posted up in three of the most public places in the city.

SEC. 36. All ordinances of the city may be proven by seal of the corporation; and when printed or published in book or pamphlet form, purporting to be printed or published by the authority of the corporation, the same shall be received in evidence in all courts or places without further proof.

SEC. 37. The mayor and aldermen shall be conservators of the peace within the limits of the city, and shall have all the powers of justices of the peace therein, both in civil and criminal cases arising under the laws of the State. They shall, as justices of the peace, within the limits of the city perform the same duties, be governed by the same laws, give the same bonds and securities as other justices of the peace, and be commissioned, as justices of the peace in and for said city, by the governor.

SEC. 38. The mayor and aldermen shall have exclusive jurisdiction in all cases arising under the ordinances of the corporation, and shall issue such process as may be necessary to carry said ordinances into execution and effect. Appeals may be had from any decision or judgment of said mayor or aldermen, arising under the ordinances of said city, in the same manner as appeals are taken from justices of the peace.

SEC. 39. The city council may sit at such times and places as may be prescribed by city ordinance; special meetings of which may at any time be called by the mayor or any two aldermen.

SEC. 40. All process issued by the mayor or aldermen shall be directed to the marshal; and in the execution thereof, he shall be governed by the same laws as are or may be prescribed for the direction and compensation of constables in similar cases. The marshal shall also perform such other duties as may be required of him under the ordinances of said city, and shall be the principal ministerial officer.

SEC. 41. It shall be the duty of the recorder to make and keep accurate records of all ordinances made by the city council and of all their proceedings in their corporate capacity, which record shall at all times be open to the inspection of the electors of said city, and shall perform all other duties as may be required of him by the ordinances of the city council.

SEC. 42. When it shall be necessary to take private property for opening, widening or altering any public street, lane, avenue or alley, the corporation shall make a just compensation therefor to the person whose property is so taken; and if the amount of such compensation cannot be agreed upon, the mayor shall cause the same to be ascertained by a jury of six disinterested men, who shall be inhabitants of the city.

SEC. 43. All jurors, impaneled to enquire into the amount of benefits or damages that shall happen to the owners of property so proposed to be taken, shall first be sworn to that effect, and shall return to the mayor their inquest in writing, signed by each juror.

SEC. 44. In case the mayor shall, at any time, be guilty of a palpable omission of duty, or shall willfully or corruptly be guilty of oppression, malconduct or partiality in the discharge of the duties of his office, he shall be liable to indictment; and, on conviction, he shall be liable to fine and imprisonment, and the court shall have power on the recommend of the jury, to add to the judgment of the court that he be removed from office.

SEC. 45. The city council shall have power to provide for the punishment of offenders and vagrants by imprisonment in the county or city jail, or by compelling them to labor upon the streets or other public works until the same shall be fully paid, in all cases when such offenders or vagrants shall fail or refuse to pay the fines and forfeitures which may be awarded against them.

SEC. 46. (1)

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(1) Repealed Jan. 15, 1862.

II. EPHRAIM.

An Act incorporating the city of Ephraim, in Sanpete county.

[*Approved February* 14, 1868.]

SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That all that district of Sanpete county embraced in the following boundaries, to wit: Commencing at a point where the county road crosses Willow creek south-westerly from Ephraim, thence west along the north boundary of Manti city to the north-west corner of said city boundary, thence north one-half mile, thence east five miles, thence south to the north-east corner of Manti city boundary, thence down the centre of the stream to the place of beginning shall be known and designated under the name and style of the city Ephraim, and the inhabitants thereof are hereby constituted a body corporate and politic by the name and style aforesaid, and shall have perpetual succession, and may have and use a common seal, which they may change and alter and pleasure.

SEC. 2. The inhabitants of said city, by the name and style aforesaid, shall have power to sue and be sued, to plead and be impleaded, defend and be defended in all courts of law and equity and in all actions whatsoever; to purchase, receive and hold property, real and personal, in said city; to purchase, receive and hold real property beyond the city for burying grounds or other public purposes, for the use of the inhabitants of said city; to sell, lease, convey or dispose of property, real and personal, for the benefit of said city; to improve and protect such property, and to do all other things in relation thereto as natural persons.

SEC. 3. There shall be a city council, to consist of a mayor and five councilors, who shall have the qualifications of electors of said city, and shall be chosen by the qualified voters thereof, and shall hold their offices for two years and until their successors shall be elected and qualified. The city council shall judge of the qualifications, elections and returns of their own members, and a majority of them shall form a quorum to do business, but a smaller number may adjourn from day to day and compel the attendance of absent members under such penalties as may be prescribed by ordinance; there shall also be elected in like manner two justices of the peace, who shall have the qualifications of voters, be commissioned by the governor, and have jurisdiction in all cases arising under the ordinances of the city.

SEC. 4. The mayor and councilors, before entering upon the duties of their offices, shall take and subscribe an oath or affirmation that they will support the Constitution of the United States and the laws of this Territory, and that they will well and truly perform all the duties of their offices to the best of their skill and abilities.

SEC. 5. One mayor and five councilors shall be elected biennially, and the first election under this act shall be held at such time in said city as the probate judge of Sanpete county shall direct: *Provided*, said election shall be held on or before the first Monday in May next. Said election shall be held and conducted as now is provided by law for the holding of elections for county and Territorial officers; and at the said first election, all electors within said city limits shall be entitled to vote.

SEC. 6. The clerks of election shall leave with each person elected, or at his usual place of residence, within five days after the election, a written notice of his election; and each person so notified shall, within ten days after the election, take the oath or affirmation hereinbefore mentioned, a certificate of which oath shall be deposited with the recorder, whose appointment is hereinafter provided for, and be by him preserved; and all subsequent elections shall be held, conducted and returns thereof made as may be provided for by ordinance of the city council.

SEC. 7. The city council shall have authority to levy and collect taxes for city purposes upon all taxable property, real and personal, within the limits of the city, not exceeding one-half of one per cent. per annum upon the assessed value thereof; and may enforce the payment of the same, to be provided for by ordinance not repugnant to the Constitution of the United States, or the laws of this Territory.

SEC. 8. The city council shall have power to appoint a recorder, treasurer, assessor and collector, marshal and supervisor of streets. They shall also have the power to appoint all such other officers, by ordinance, as may be necessary, define the duties of all city officers and remove them from office at pleasure.

SEC. 9. The city council shall have power to require of all officers appointed in pursuance of this act, bonds with security for the faithful performance of their respective duties. and also to require of all officers appointed as aforesaid, to take an oath for the faithful performance of the duties of their respective offices.

SEC. 10. The city council shall have power and authority to make, ordain, establish and execute all such ordinances, not repugnant to the Constitution of the United States or the laws of this Territory, as they may deem necessary for the peace, benefit, good order, regulation, convenience and cleanliness of said city; for the protection of property therein from destruction by fire or otherwise, and for the health and happiness of the inhabitants thereof; and shall have control of the water and water courses leading to the city: *Provided*, That such control shall not be exercised to the injury of any rights already acquired by actual settlers thereon; and shall have control of the water courses and mill privileges within said city; but in no case shall they interfere with the natural rights of others heretofore acquired in relation to water. They shall have power to fill all vacancies, that may happen by death, resignation, removal or otherwise, of any of the officers herein made elective; to fix and establish the fees of the officers of said corporation. The city council shall have power to divide the city into wards, and specify the boundaries thereof.

SEC. 11. All ordinances passed by the city council shall, within ten days after they shall been passed, be published in some newspaper printed in said city, or certified copies thereof be posted up in three of the most public places in the city. They shall not be in force until thus published or posted up.

SEC. 12. All ordinances of the city may be proven by the seal of the corporation affixed thereto; and, when printed or published in book or pamphlet form, purporting to be printed or published by the authority of the corporation, the same shall be received in evidence in all courts and places, without further proof.

SEC. 13. The justices of the peace of said city shall have all the powers of other justices of the peace, both in civil and criminal cases arising under the laws of the Territory. They shall perform the same duties, be governed by the same laws, and give the same bonds and securities as other justices of the peace. They shall have exclusive jurisdiction in all cases arising under the ordinances of the city, and shall issue such process as may be necessary to carry such ordinances into execution. Appeals may be had from any decision or judgment of said justices, arising under the ordinances of said city, or the laws of the Territory, in the same manner as appeals are or may be taken from other justices of the peace.

SEC. 14. The mayor shall be the chief executive officer of said corporation; he shall preside in the city council, and shall have power to veto any ordinance when not passed by four-fifths majority, and it shall be his duty to sign all city ordinances.

SEC. 15. The city council shall have power to restrain, regulate, or prohibit the running at large of cattle, horses, mules, sheep, swine, goats and all kinds of poultry; and to tax and regulate the keeping of dogs, and to authorize the destruction of the same when at large contrary to city ordinance.

SEC. 16. To license, regulate, prohibit or restrain the manufacturing, selling or giving away of spirituous, vinous or fermented liquors, [to license and regulate] tavern keepers, dram or tippling shop keepers, boarding, victualing or coffee houses, restaurants, saloons or other houses or places for the selling or giving away of ardent, vinous or fermented liquors.

SEC. 17. The city council shall have power, by ordinance, to regulate the police of the city; to license, tax and regulate auctioneers, merchants, and retailers; to license, tax and regulate theatrical and other exhibitions, shows and amusements; to tax, restrain prohibit and suppress gaming, bawdy and other disorderly houses.

SEC. 18. This act shall be in force on after the twentieth day of February, one thousand eight hundred and sixty-eight, and may be amended or repealed at the pleasure of the Legislative Assembly.

III. MORONI.

An Act to incorporate the city of Moroni, in Sanpete county.

[*Approved January* 17, 1866.]

SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That all that portion of country situated within the following boundaries, to wit: Beginning at the north end of the bridge south of Moroni crossing Sanpitch river, running west two miles from said bridge, thence north four miles, thence east four miles, thence south four miles, thence west two miles to Sanpitch bridge, the place of beginning, shall be known and designated by the name of Moroni city, and the inhabitants thereof are hereby constituted a body corporate and politic by the name aforesaid; and may have and use a common seal, which they may change and alter at pleasure.

SEC. 1. That the north-east corner of Moroni city corporation be extended one and one-fourth miles east from its present location, thence due south until it intersects the boundary line of Spring city corporation, thence diagonally along said Spring city corporation line to the south-east corner of the former boundary of Moroni; and the west line of Mount Pleasant incorporation is hereby to the east, so as to conform to the extended boundary of Moroni as specified in this act. (1)

SEC. 2. The inhabitants of said city, by the name and style aforesaid, shall have power to sue and be sued, to plead and be impleaded, defend and be defended in all courts of law and equity and in all actions whatsoever; to purchase, receive and hold property, real and personal, in said city; to purchase, receive and hold real property beyond the city for burying grounds or other public purposes for the use of the inhabitants of said city; to improve and protect such property, and to do all other things in relation thereto, as natural persons.

SEC. 3. There shall be a city council to consist of a mayor and five councilors, who shall have the qualifications of electors of said city, and shall be chosen by the qualified voters thereof, and shall hold their offices for two years, and until their successors shall be elected and qualified. The city council shall judge of the qualifications, elections and returns of their own members, and a majority of them shall form a quorum to do business; but a smaller number may adjourn from day to day and compel the attendance of absent members, under such penalties as may be prescribed by ordinance; there shall also be elected in like manner two justices of the peace who shall have the qualifications of voters, be commissioned by the governor and have jurisdiction in all cases arising under the ordinances of the city.

SEC. 4. The mayor and councilors, before entering upon the duties of their offices, shall take and subscribe an oath or affirmation that they will support the Constitution of the United States and the laws of this Territory, and that they will well and truly perform all the duties of their offices to the best of their skill and abilities.

SEC. 5. One mayor and five councilors shall be elected biennially and the first election under this act shall be at such time in said city as the probate judge of Sanpete county shall direct: *Provided*, said election shall be on or before the first Monday in August next. Said election shall be held and conducted as is now provided by law for the holding of elections for county and Territorial officers; and, at the said first election, all residents, over twenty-one years of age, within said city limits, shall be entitled to vote.

SEC. 6. The clerks of election shall leave with each person elected, or at his usual place of residence, within five days after the election, a written notice of his election, and each person so notified shall, within ten days after the election, take an oath or affirmation hereinbefore mentioned, a certificate of which oath shall be deposited with the recorder, whose appointment is hereinafter provided for, and be by him preserved; and all subsequent elections shall be held, conducted, and returns thereof made, as may be provided for by ordinance of the city council.

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(1) Amendment of Feb. 18, 1870.

SEC. 7. The city council shall have authority to levy and collect taxes, for city purposes, upon all taxable property, real and personal, within the limits of the city, not exceeding one-half of one per cent. per annum upon the assessed value thereof; and may enforce the payment of the same to be provided for by ordinance, not repugnant to the Constitution of the United States or to the laws of this Territory.

SEC. 8. The city council shall have power to appoint a recorder, treasurer, assessor and collector, marshal and supervisor of streets. They shall also have the power to appoint all such other officers, by ordinance, as may be necessary, define the duties of all city officers and remove them from office at pleasure.

SEC. 9. The city council shall have power to require of all officers, appointed in pursuance of this act, bonds with security, for the faithful performance of their respective duties, and also to require of all officers, appointed as aforesaid, to take an oath for the faithful performance of the duties of their respective offices.

SEC. 10. The city council shall have power and authority to make, ordain, establish and execute all such ordinances, not repugnant to the Constitution of the United States or the laws of this Territory, as they may deem necessary for the peace, benefit, good order, regulalation, convenience and cleanliness of said city; for the protection of property therein from destruction by fire or otherwise, and for the health and happiness of the inhabitants thereof, and shall have control of the water of the Sanpitch river: *Provided*, that such control shall not be exercised to the injury of any rights already acquired by actual settlers thereon, and shall have control of the water courses and mill privileges within said city, but in no case shall they interfere with the natural rights of others heretofore acquired in relation to water. They shall have power to fill all vacancies that may happen by death, resignation or removal of any of the officers herein made elective; to fix and establish the fees of the officers of said corporation. The city council shall have power to divide the city into wards and specify the boundaries thereof.

SEC. 11. All ordinances passed by the city council shall, within ten days after they shall have been passed, be published in some newspaper printed in said city, or certified copies thereof be posted up in three of the most public places in the city. They shall not be in force until thus published or posted up.

SEC. 12. All ordinances of the city may be proven by the seal of the corporation affixed thereto; and, when printed or published in book or pamphlet form, purporting to be printed or published by the authority of the corporation, the same shall be received in evidence in all courts and places, without further proof.

SEC. 13. The justices of the peace of said city shall have all the powers of other justices of the peace, both in civil and criminal cases arising under the laws of the Territory. They shall perform the same duties, be governed by the same laws, give the same bonds and securities as other justices of the peace. They shall have exclusive jurisdiction in all cases arising under the ordinances of the corporation, and shall issue such process as may be necessary to carry such ordinances into execution. Appeals may be had from any decision or judgment of said justices arising under the ordinances of said city, or laws of the Territory, in the same manner as appeals are or may be taken from other justices of the peace.

SEC. 14. The mayor shall be the chief executive officer of said corporation, he shall preside in the city council, and shall have power to veto any ordinance when not passed by four-fifths majority, and it shall be his duty to sign all city ordinances.

SEC. 15. This act shall be in force on and after the tenth day of February, 1866, and may be amended or repealed at the pleasure of the Legislative Assembly.

IV. MOUNT PLEASANT.

An Act incorporating Mount Pleasant, in Sanpete county.

[*Approved February* 20, 1868.]

SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That all that portion of Sanpete county embraced within the following boundaries, to wit: Beginning at the mouth of Cedar Creek cañon, thence running westwardly down the centre of the channel of said Cedar creek to the bridge on the road leading from Springtown to Mount Pleasant, as traveled at the present time, giving half the waters of Cedar creek to Springtown during the season of irrigation, and from said bridge running a due west course until it shall intersect the eastern boundary of Moroni city, thence north along said eastern boundary four miles, thence eastwardly, crossing Sanpitch river to Birch creek, thence up the centre of said Birch creek to the mountains, giving half the waters of said Birch creek to Mount Pleasant, and the other half to Fairview, thence southwardly along the slopes of the mountains to the place of beginning, shall be known and designated under the name and style of Mount Pleasant, and the inhabitants thereof are hereby constituted a body corporate and politic by the name aforesaid, and may have and use a common seal, which they may change and alter at pleasure.

SEC. 1. That the north-east corner of Moroni city corporation be extended one and one-fourth miles east from its present location, thence due south until it intersects the boundary line of Spring City corporation, thence diagonally along said Spring City corporate line to the south-east corner of the former boundary of Moroni; and the west line of Mount Pleasant incorporation is hereby to the east, so as to conform to the extended boundary of Moroni as specified in this act. (1)

SEC. 2. The inhabitants of said city, by the name and style aforesaid, shall have power to sue and be sued, to plead and be impleaded, defend and be defended in all courts of law and equity, and in all actions whatsoever; to purchase, receive and hold property, real and personal, in said city; to purchase, receive and hold real property beyond the city for burying grounds or for other public purposes for the use of the inhabitants of said city; to sell, lease, convey or dispose of property real and personal for the benefit of said city; to improve and protect such property, and to do all other things in relation thereto as natural persons.

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(1) Amendment of February 18, 1870.

SEC. 3. There shall be a city council, to consist of a mayor and five councilors, who shall have the qualifications of electors of said city, and shall be chosen by the qualified voters thereof, and shall hold their offices for two years and until their successors shall be elected and qualified. The city council shall judge of the qualifications, elections and returns of their own members, and a majority of them shall form a quorum to do business; but a smaller number may adjourn from day to day, and compel the attendance of absent members under such penalties as may be prescribed by ordinance; there shall also be elected in like manner two justices of the peace, who shall have the qualifications of voters, be commissioned by the governor and have jurisdiction in all cases arising under the ordinances of the city.

SEC. 4. The mayor and councilors, before entering upon the duties of their offices, shall take and subscribe an oath or affirmation that they will support the Constitution of the United States and the laws of this Territory, and that they will well and truly perform all the duties of their offices to the best of their skill and abilities.

SEC. 5. One mayor and five councilors shall be elected biennially, and the first election under this act shall be at such times in said city as the probate judge of Sanpete county shall direct: *Provided*, said election shall be on or before the first Monday in August next. Said election shall be held and conducted as now is provided by law for the holding of elections for county and Territorial officers; and, at the said first election, all electors within said city limits shall be entitled to vote.

SEC. 6. The clerks of election shall leave with each person elected, or at his usual place of residence, within five days after the election, a written notice of his election; and each person so notified shall within ten days after the election, take the oath or affirmation hereinbefore mentioned, a certificate of which oath shall be deposited with the recorder, whose appointment is hereinafter provided for, and be by him preserved; and all subsequent elections shall be held, conducted and returns thereof made as may be provided for by ordinance of the city council.

SEC. 7. The city council shall have authority to levy and collect taxes for city purposes upon all taxable property, real and personal, within the limits of the city, not exceeding one-half of one per cent. per annum upon the assessed value thereof; and may enforce the payment of the same in any manner to be provided by ordinance not repugnant to the Constitution of the United States or the laws of this Territory.

SEC. 8. The city council shall have power to appoint a recorder, treasurer, assessor and collector, marshal and supervisor of streets. They shall also have power to appoint all such other officers, by ordinance, as may be necessary, define the duties of all city officers and remove them from office at pleasure.

SEC. 9. The city council shall have power to require of all officers, appointed in pursuance of this act, bonds with security, for the faithful performance of their respective duties, and also to require of all officers, appointed as aforesaid, to take an oath for the faithful performance of the duties of their respective offices.

SEC. 10. The city council shall have power and authority to make, ordain, establish and execute all such ordinances, not repugnant to the Constitution of the United States or the laws of this Territory, as they may deem necessary for the peace, benefit, good order, regulation, convenience and cleanliness of said city; for the protection of property therein from destruction by fire or otherwise, and for the health and happiness of the inhabitants thereof; and shall have control of the water and water courses leading to the city: *Provided*, that such control shall not be exercised to the injury of any rights already acquired by actual settlers thereon, or any rights granted in this charter; and shall have control of the water courses and mill privileges within said city, but in no case shall they interfere with the natural rights of others acquired in relation to water privileges within said city. They shall have power to fill all vacancies that may happen by death, resignation, removal or otherwise, in any of the offices herein made elective; to fix and establish the fees of the officers of said corporation, to impose such fines, not exceeding one hundred dollars, and imprisonment not exceeding six months, for each offense, for the breach or violation of any city ordinance; to divide the city into wards and specify the boundaries thereof.

SEC. 11. All ordinances passed by the city council shall, within ten days after their passage, be published in some newspaper printed in said city, or certified copies thereof be posted up in three of the most public places in the city. They shall not be in force until thus published or posted up.

SEC. 12. All ordinances of the city may be proven by the seal of the corporation, and, when printed or published in book or pamphlet form, purporting to be printed or published by the authority of the corporation, the same shall be received in evidence in all courts and places, without further proof.

SEC. 13. The justices of the peace of said city shall have all the powers of other justices of the peace, both in civil and criminal cases arising under the laws of the Territory. They shall perform the same duties, be governed by the same laws, give the same bonds and securities as other justices of the peace. They shall have exclusive jurisdiction in all cases arising under the ordinances of the corporation, and shall issue such process as may be necessary to carry such ordinances into execution. Appeals may be had from any decision or judgment of said justices, arising under the ordinances of said city, or the laws of this Territory, in the same manner as appeals are or may be taken from other justices of the peace.

SEC. 14. The mayor shall be the chief executive officer of said corporation; he shall preside in the city council, and shall have power to veto any ordinance when not passed by four-fifths majority, and it shall be his duty to sign all city ordinances.

SEC. 15. The city council shall have power to restrain, regulate or prohibit the running at large of cattle, horses, mules, sheep, swine, goats and all kinds of poultry; and to tax and regulate the keeping of dogs, and to authorize the destruction of the same when at large contrary to city ordinance.

Sec. 16. To prohibit or restrain the manufacturing, selling or giving away of spirituous, vinous or fermented liquors, to tax and regulate hotel keepers, boarding, victualing or coffee houses, restaurants, saloons or other houses or places of entertainment.

Sec. 17. The city council shall have exclusive power, by ordinance, to regulate the police of the city; to license, tax and regulate auctioneers, merchants and retailers and theatrical and other exhibitions, shows, amusements and gaming; to restrain, prohibit and suppress gambling, bawdy and other disorderly houses.

Sec. 18. This act shall be in force on and after the first Monday in April, one thousand eight hundred and sixty-eight, and may be amended or repealed at the pleasure of the Legislative Assembly.

V. SPRING CITY.

An Act incorporating Spring City, in Sanpete county.

[*Approved February* 11, 1870.]

Sec. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That all that portion of Sanpete county embraced in the following boundaries, to wit: Beginning at Cedar creek bridge, on the county road, between Mount Pleasant city and Springtown, thence along the south line of Mount Pleasant city boundary, to the south-east corner of said city corporation, thence in a south-westerly direction to the south-east corner of Springtown precinct, thence westerly to the south line of Springtown meadow survey, thence along said line to Sanpitch river, thence up the centre of said river three-fourths of a mile, thence east to the dugway, on the county road, between Ephraim city and Moroni city, thence northerly to the south-east corner of Moroni city corporation, thence north-easterly to the south line of Mount Pleasant city boundary, one and a fourth miles west of Cedar creek bridge, thence east along said line to the place of beginning, shall be known and designated under the name and style of Spring City; and the inhabitants thereof are hereby constituted a body corporate and politic, by the name and style aforesaid and may have and use a common seal, which they may change and alter at pleasure.

Sec. 2. The inhabitants of said city by the name and style aforesaid, shall have power to sue and be sued, to plead and be impleaded, defend and be defended in all courts of law and equity, and in all actions whatsoever; to purchase, receive and hold property, real and personal in said city; to purchase, receive and hold real property beyond the city for burying grounds or other public purposes for the use of the inhabitants of said city; to sell, lease, convey or dispose of property, real and personal for the benefit of said city; to improve and protect such property, and to do all other things in relation thereto as natural persons.

Sec. 3. There shall be a city council, to consist of a mayor and six councilors, who shall have the qualifications of electors of said city, and shall be chosen by the qualified voters thereof, and shall hold their offices for two years and until their successors shall be elected and qualified. The city council shall judge of the qualifications, elections and returns of their own members, and a majority of them shall form a quorum to do business; but a smaller number may adjourn from day to day, and compel the attendance of absent members under such penalties as may be prescribed by ordinance; there shall also in like manner be elected, two justices of the peace, who shall have the qualifications of voters, be commissioned by the governor, and have jurisdiction in all cases arising under the ordinances of the city.

SEC. 4. The mayor and councilors before entering upon the duties of their offices, shall take and subscribe an oath or affirmation that they will support the Constitution of the United States and the laws of this Territory, and that they will well and truly perform all the duties of their offices to the best of their skill and abilities.

SEC. 5. A mayor, six councilors and two justices of the peace, shall be elected biennially, and the first election under this act shall be at such time and place in said city, as the probate judge of Sanpete county shall direct: *Provided*, said election shall be on or before the first Monday in August, next. Said election shall be held and conducted as is now provided by law for the holding of elections for county and Territorial officers; and at the said first election, all electors residing within said city limits shall be entitled to vote.

SEC. 6. The clerks of election shall leave with each person elected, or at his usual place of residence, within five days after the election, a written notice of his election, and each person so notified, shall, within ten days after the election, take the oath or affirmation hereinbefore mentioned, a certificate of which oath shall be deposited with the recorder, whose appointment is hereinafter provided for, and be by him preserved; and all subsequent elections shall be held, conducted, and returns thereof made as may be provided for by ordinance of the city council.

SEC. 7. The city council shall have authority to levy and collect taxes for city purposes upon all taxable property, real and personal, within the limits of the city, not exceeding one-half of one per cent. per annum upon the assessed value thereof, and may enforce the payment of the same in any manner, to be provided for by ordinance, not repugnant to the Constitution of the United States, or the laws of this Territory.

SEC. 8. The city council shall have power to appoint a recorder, treasurer, assessor and collector, marshal and supervisor of streets, and all other officers, by ordinance, as may be necessary; define the duties of all city officers, and remove them from office at pleasure.

SEC. 9. The city council shall have power to require of all officers, appointed in pursuance of this act, bonds with security, for the faithful performance of their respective duties; and also to require of all officers appointed as aforesaid, to take an oath for the faithful performance of the duties of their respective offices.

SEC. 10. The city council shall have power and authority, to make, ordain, establish and execute all such ordinances, not repugnant to the Constitution of the United States or the laws of this Territory, as they may deem necessary for the peace, good order, benefit, regulation, convenience and cleanliness of said city, for the protection of property therein from destruction by fire or otherwise, and for the health and happiness of the inhabitants thereof; and shall have control of the water and water courses leading to the city: *Provided*, that such control shall not be exercised to the injury of any rights already acquired by actual settlers thereon, or any rights granted in this charter; and shall have control of the water courses and mill privileges within said city, but in no case shall they interfere with the natural rights of others, acquired in relation to water privileges within said city. They shall have power to fill all vacancies that may happen by death, resignation, removal, or otherwise in any of the offices herein made elective; to fix and establish the fees of the officers of said corporation, to impose such fines not exceeding one hundred dollars, and imprisonment, not exceeding six months for each offense, for the breach or violation of any city ordinance; to divide the city into wards, and specify the boundaries thereof.

SEC. 11. All ordinances passed by the city council, shall, within ten days after their passage, be published in some newspaper printed in said city, or certified copies thereof be posted up in three of the most public places in the city. They shall not be in force until thus published or posted up.

SEC. 12. All ordinances of the city may be proven by the seal of the corporation, and when printed or published in book or pamphlet form, purporting to be printed or published by the authority of the corporation, the same shall be received in evidence in all courts and places, without further proof.

SEC. 13. The justices of the peace of said city shall have all the powers of other justices of the peace, both in civil and criminal cases arising under the laws of the Territory. They shall perform the same duties, be governed by the same laws, and give the same bonds and securities as other justices of the peace. They shall have exclusive original jurisdiction in all cases arising under the ordinances of the corporation, and shall issue such process as may be necessary to carry such ordinances into execution. Appeals may be had from any decision or judgment of said justices arising under the ordinances of said city, or the laws of this Territory, in the same manner as appeals are or may be taken from other justices of the peace.

SEC. 14. The mayor shall be the chief executive officer of said corporation. He shall preside in the city council, and shall have power to veto any ordinance, but when passed by two-thirds majority after considering his objections, it shall be his duty to sign all such ordinances: *Provided*, that in the absence of the mayor at any meeting of the council, the council shall have power to appoint one of their number to preside.

SEC. 15. The city council shall have power to restrain, regulate or prohibit the running at large of cattle, horses, mules, sheep, swine, goats, and all kinds of poultry; and to tax and regulate the keeping of dogs, and to authorize the destruction of the same when at large contrary to city ordinance.

SEC. 16. To prohibit or restrain the manufacturing, selling or giving away of spirituous, vinous or fermented liquors, to tax and regulate hotel keepers, victualing or coffee houses, restaurants, saloons, or other houses or places of entertainment.

SEC. 17. The city council shall have exclusive power by ordinance to regulate the police of the city, to license, tax and regulate auctioneers, merchants, retailers, theatricals, and other exhibitions, shows and amusements; to prohibit and suppress gaming; to prohibit and suppress bawdy and other disorderly houses.

SEC. 18. To make regulations to prevent the introduction of contagious diseases into the city, to make quarantine laws and enforce the same within the city.

SEC. 19. To establish hospitals and make regulations for the government of the same. To make regulations to secure the general health of the inhabitants, to declare what shall be nuisances and prevent and remove the same.

SEC. 20. This act shall be in force on and after the first Monday in April, eighteen hundred and seventy, and may be amended at the pleasure of the Legislative Assembly.

VI. FAIRVIEW.

An Act incorporating the city of Fairview, in Sanpete county.

[*Approved February* 16, 1872.]

SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That all that portion of country situated within the following boundaries, to wit: Beginning at the mouth of Birch creek where it empties into the Sanpitch river, thence east following the channel of said creek to base of mountain, thence north five miles, thence west four miles, thence south five miles, thence east to the place of beginning, shall be known and designated by the name of the "city of Fairview," and the inhabitants thereof are hereby constituted a body corporate and politic, by the name aforesaid; and may have and use a common seal, which they may change and alter at pleasure.

SEC. 2. The inhabitants of said city, by the name and style aforesaid, shall have power to sue and be sued, to plead and be impleaded, defend and be defended in all courts of law and equity, and in all actions whatsoever; to purchase, receive and hold property, real and personal in said city, to purchase, receive and hold real property beyond the city for burying grounds or other public purposes for the use of the inhabitants of said said city; to sell, lease, convey or dispose of property, real and personal, for the benefit of said city; to improve and protect such property, and to do all other things in relation thereto, as natural persons.

SEC. 3. There shall be a city council to consist of a mayor and six councilors, who shall [have] the qualifications of electors of said city, and shall be chosen by the qualified voters thereof, and shall hold their offices for two years, and until their successors shall be elected and qualified. The city council shall judge of the qualifications, elections and returns of their own members, and a majority of them shall form a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members, under such penalties as may be prescribed by ordinance.

SEC. 4. The mayor and councilors, before entering upon the duties of their offices, shall take and subscribe an oath or affirmation that they will support the Constitution of the United States and the laws of this Territory, and that they will well and truly perform all the duties of their offices to the best of their skill and abilities.

SEC. 5. A mayor, six councilors and two justices of the peace, shall be elected biennially, and the first election under this act shall be at such time and place as the probate judge of Sanpete county shall direct: *Provided*, said election shall be on or before the first Monday in August next. Said election shall be held and conducted as is now provided by law for the holding of elections for county and Territorial officers; and at the said first election, all electors residing within the limits of said city, shall be entitled to vote.

SEC. 6. The clerks of election shall leave with each person elected, or at his usual place of residence, within five days after the election, a written notice of his election, and each person so notified shall, within ten days after the election, take the oath or affirmation hereinbefore mentioned, a certificate of which oath shall be deposited with the recorder, whose appointment is hereinafter provided for, and be by him preserved; and all subsequent elections shall be held, conducted and returns thereof made, as may be provided for by ordinance of the city council.

SEC. 7. The city council shall have authority to levy and collect taxes, for city purposes, upon all taxable property, real and personal, within the limits of the city, not exceeding one-half of one per cent. per annum upon the assessed value thereof; and may enforce the payment of the same in any manner to be provided by ordinance, not repugnant to the Constitution of the United States or the laws of this Territory.

SEC. 8. The city council shall have power to appoint a recorder, treasurer, assessor and collector, marshal and supervisors of streets. They also have the power to appoint all such other officers, by ordinance, as may be necessary, define the duties of all city officers and remove them from office at pleasure.

SEC. 9. The city council shall have power to require of all officers appointed in pursuance of this act, bonds with security, for the faithful performance of their respective duties, and also to require of all officers, appointed as aforesaid, to take an oath for the faithful performance of the duties of their respective offices.

SEC. 10. The city council shall have power and authority to make, ordain, establish and execute all such ordinances, not repugnant to the Constitution of the United States or the laws of this Territory, as they may deem necessary for the peace, benefit, good order, regulation, convenience and cleanliness of said city; for the protection of property therein, from destruction by fire or otherwise, and for the health and happiness [of the inhabitants] thereof, and shall have control of the water courses and mill privileges within said city: *Provided*, that such control shall not be exercised to the injury of any rights already acquired by actual settlers thereon. They shall have power to fill all vacancies that may happen by death, resignation or removal in any of the offices herein made elective; to fix and establish the fees of the officers of said corporation, to impose such fines, not exceeding one hundred dollars, and imprisonment not exceeding six months, for each offense, for the breach or violation of any city ordinance, to divide the city into wards and specify the boundaries thereof.

SEC. 11. All ordinances passed by the city council shall, within one month after they shall have been passed, be published in some newspaper printed in said city, or certified copies thereof be posted up in three of the most public places in the city.

SEC. 12. All ordinances of the city may be proven by the seal of the corporation; and when printed or published in book or pamphlet form, purporting to be printed or published by the authority of the corporation, the same shall be received in evidence in all courts and places without further proof.

SEC. 13. The mayor shall be chief executive officer of said corporation. He shall preside in the city council and shall have power to veto any ordinances, but when passed by two-thirds majority, after considering his objections, if he still declines to approve the ordinance, it shall go into effect without his approval, a statement to that effect being attached thereto: *Provided*, that in the absence of the mayor at any meeting of the council, the council shall have power to appoint one of their number to preside.

SEC. 14. The city council shall have exclusive power by ordinance, to regulate the police of the city, to license, tax and regulate auctioneers, merchants, retailers, theatrical and other exhibitions, shows and amusements; to prohibit and suppress gaming; to prohibit and suppress bawdy and other disorderly houses and punish the keepers thereof.

SEC. 15. To make regulations to prevent the introduction of contagious diseases into the city, to make quarantine laws and enforce the same within the city. To establish hospitals and make regulations for the government of the same. To make regulations to secure the general health of the inhabitants, to declare what shall be nuisances and prevent and remove the same.

SEC. 16. The city council shall [have] power to restrain, regulate or prohibit the running at large of cattle, horses, mules, sheep, swine, goats and all kinds of poultry; and to tax and regulate the keeping of dogs, and to authorize the destruction of the same when at large, contrary to city ordinance.

SEC. 17. To license, regulate, prohibit or restrain the manufacturing, selling or giving away of spirituous, vinous or fermented liquors; [to tax and regulate] tavern keepers, dram or tippling shop keepers, boarding, victualing or coffee houses, restaurants, saloons or other houses or places for the selling or giving away of ardent, vinous or fermented liquors.

SEC. 18. The justices of the peace provided for in this act shall hold their offices for two years and until their successors are qualified, and shall have exclusive original jurisdiction in all cases arising under the ordinances of the corporation, and issue such processes as may be necessary to carry such ordinances into execution, and may exercise civil and criminal jurisdiction in cases arising under the laws of the Territory. They shall perform the same duties, be governed by the same laws, give the same bonds and securities as other justices of the peace and shall be commissioned by the governor.

SEC. 19. Appeals may be had from any decision or judgment of said justices arising under the ordinances of said city, or the laws of the Territory, in the same manner as appeals are or may be taken from other justices of the peace.

CHAPTER XII.

OF INCORPORATED CITIES IN TOOELE COUNTY.

I. Grantsville. II. Tooele.

I, GRANTSVILLE.

An Act to incorporate the city of Grantsville.

[*Approved January* 12, 1867.]

SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That all that district of country embraced in the following boundaries in Tooele county, to wit: Commencing two and a half miles due east from a point known as the lumber bridge situated on the county road running through Grantsville, in Tooele county, thence south two miles, thence west four and a half miles, thence north four and a half miles, thence east four and a half miles, thence south south two and one-half miles to the place of beginning, shall be known and designated under the name and style of Grantsville city; and the inhabitants thereof are hereby constituted a body corporate and politic by the name aforesaid, and shall have perpetual succession; and may have and use a common seal, which they may change and alter at pleasure.

SEC. 2. The inhabitants of said city, by the name and style aforesaid, shall have power to sue and be sued, to plead and be impleaded, defend and be defended in all courts of law and equity and in all actions whatsoever; to purchase, receive, hold, sell, lease, convey and dispose of property, real and personal, for the benefit of said city, both within and without its corporate boundaries; to improve and protect such property, and to do all other things in relation thereto as natural persons.

SEC. 3. The municipal government of said city is hereby vested in a city council to be composed of a mayor, three aldermen, one from each ward, and five councilors, who shall have the qualifications of electors of said city, and shall be chosen by the qualified voters thereof, and shall hold their office for two years and until their successors are elected and qualified.

SEC. 4. An election shall be held on the first Monday of August (1) next, and every two years thereafter on said day, at which there shall be elected one mayor, three aldermen, five councilors, and one justice of the peace; and the persons respectively receiving the highest number of votes cast in the city for said officers, shall be declared elected. When two or more candidates shall have an equal number of votes for the same office, the election shall be determined by the city council.

SEC. 5. The first election under this act shall be conducted in the following manner, to wit: The county clerk of Tooele county shall cause notice of the time and place, and the number and kind of officers to be chosen, to be posted up in four public places in said city, at least ten days previous to said election. Two judges shall be selected by the probate judge of Tooele county, at least one week previous to the day of election. Said judges shall choose two clerks, and the judges and clerks, before entering upon their duties, shall take and subscribe an oath or affirmation, before the county court, for the faithful performance of said duties. The polls shall be open at eight o'clock a. m., and shall close at six o'clock p. m. At the close of the election the judges shall seal up the ballot box and the list of names of the electors, and transmit the same, within two days from the time of holding such election, to the county clerk of Tooele county. As soon as the returns are received, the county clerk, in the presence of the probate judge, shall unseal and examine them, and furnish, within five days, to each person having the highest number of votes, a certificate of his election. In case of a tie, it shall be decided by lot drawn by the county clerk in presence of the probate judge.

SEC. 6. All subsequent elections held under this act shall be held, conducted and returns thereof made as may be provided for by ordinance of the city council.

SEC. 7. The city council shall be judge of the qualifications, elections and returns of their own members; and a majority of them shall form a quorum to do business, shall determine the rules of their own proceedings, and shall meet at such time and place as they may direct; and the mayor shall preside, when present, and have a casting vote; and, in the absence of the mayor, any alderman present may be appointed to preside over said meeting.

SEC. 8. The city council may hold stated meetings; and special meetings may be called by the mayor or any two aldermen, by notice to each of the members of said council, served personally or left at his usual place of abode.

SEC. 9. The city council shall have power to appoint a marshal, recorder (who shall be the auditor of public accounts), treasurer, assessor and collector, supervisor of streets, surveyor, an attorney, a sexton, a sealer of weights and measures, and such other officers as may be necessary, define their duties, remove them from office at pleasure, and fix and establish the fees of all city officers.

SEC. 10. All officers, elected in accordance with the fourth section of this act, may be removed for cause from such office by a vote of two-thirds of the city council, and shall be furnished with the charges and have an opportunity to be heard in their defense; and the council shall have power to compel the attendance of witnesses and the production of papers when necessary.

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(1) As amended Feb. 3, 1869.

SEC. 11. When any vacancy shall happen by the death, resignation or removal of any officer, such vacancy may be filled by the city council; and every person elected or appointed to any office under this act shall, before he enters upon the duties thereof, take and subscribe an oath or affirmation that he will support the Constitution of the United States, the laws of this Territory, and the ordinances of the city, and that he will well and truly perform all the duties of his office to the best of his knowledge and ability; and he shall be required to give bonds as shall be prescribed by city ordinance, which oath and bonds shall be filed with the city recorder.

SEC. 12. The city council shall have power to divide the city into wards and specify the boundaries thereof, and, when necessary, create additional wards, and add to the number of aldermen and councilors, and proportion them among the several wards, as may be just and most conducive to the welfare of said city.

SEC. 13. The justice of the peace shall be a conservator of the peace within the limits of the city, and shall give bonds and qualify as other justices of the peace; and when so qualified shall possess the same powers and jurisdiction, both in civil and criminal cases arising under the laws of the Territory, and may be commissioned by the governor as a justice of the peace in and for said city. He shall account for and pay over all fines and forfeitures arising under the ordinances of the city, into the city treasury, and all fines and forfeitures, arising under the laws of the Territory, into the county treasury, and shall issue such process as may be necessary to carry into effect all ordinances of said city. Appeals may be had, from any decision or judgment of a justice's court, in the same manner as are or may be provided by statute for appeals from justices' courts; and he shall account for and pay over to the city treasury, within three months, all fines and forfeitures received by him by virtue of his office; and he shall keep a docket, subject at all times to the inspection of the city council and all other parties interested.

SEC. 14. All process issued by the justice of the peace shall be directed to the marshal or other legal officer; and, in execution thereof, he shall be governed by such rules and regulations as may be provided by city ordinance.

SEC. 15. It shall be the duty of the recorder to make and keep accurate records of all the ordinances made by the city council and all their proceedings in a corporate capacity, which record shall at all times be open to the inspection of the electors of said city and all other parties interested; and shall audit all accounts of said incorporation. He shall have and keep a plat of all surveys within the city; and he is hereby authorized to take the acknowledgment of deeds, transfers and other instruments of writing, and shall perform such other duties as may be required of him by city ordinance.

SEC. 16. The treasurer shall receive all money or funds belonging to the city, and shall keep an accurate account of all receipts and expenditures in such manner as the city council shall direct. He shall pay all funds, that may come into his hands by virtue of his office, upon orders signed by the auditor of public accounts; and shall report to the city council a true account of his receipts and disbursements, as they may require.

SEC. 17. The city council shall have power within the city, by ordinance, to annually levy and collect taxes on the assessed value of all property in the city made taxable by the laws of the Territory, for the following named purposes, to wit: Not to exceed five mills on the dollar for contingent expenses, nor to exceed five mills on the dollar to open, improve and keep in repair the streets of the city. The city council is further empowered to divide the city into school districts, provide for the election of trustees, appoint a board of school inspectors, annually assess and collect and expend the necessary tax for school purposes, and for furnishing the city with water for irrigating and other purposes, and regulate and control the same; and furthermore, so far as may be necessary, to control the water-courses leading thereto.

SEC. 18. The city council shall have the management and control of the finances and property of said city.

SEC. 19. To require, and it is hereby made the duty of, every able male resident of the city, over the age of eighteen and under the age of fifty years, to labor not to exceed two days in each year upon the streets; but every person may, at his option, pay two dollars for the day he shall be so bound to labor: *Provided*, it be paid within five days from the time he shall be notified by the street supervisor. In default of payment as aforesaid, the same may be collected as other taxes.

SEC. 20. The city council shall have power to borrow money for city purposes, the interest of which shall not exceed one-fourth of the city revenue arising from taxes of the previous year.

SEC. 21. The city council shall have power, by ordinance, to regulate the form of the assessment rolls. The annual assessment roll shall be returned by the assessor on or before the first Monday in June of each year, but the time may be extended or additions made thereto by order of the city council. On the return thereof, the city council shall fix a day for hearing objections thereto; and any person feeling aggrieved by the assessment of his property may appear at the time specified and make his objections, which shall be heard and determined upon by the city council; and they shall have power to alter, add to, take from and otherwise correct and revise said assessment roll.

SEC. 22. The collector shall be furnished, within thirty days after the assessment rolls are corrected, with a list of taxes to be collected; and, if not paid when demanded, the collector shall have power to collect said taxes with interest and cost, by suit in the corporate name, as may be provided by ordinance. The assessment roll shall in all cases be evidence on the part of the corporation.

SEC. 23. To appropriate and provide for the payment of the expenses and debts of the city.

SEC. 24. To make regulations to prevent the introduction of contagious diseases into the city; to make quarantine laws and enforce the same within the city and around it, not exceeding ten miles next beyond the boundaries thereof.

SEC. 25. To examine, license and regulate the practice of surgeons and physicians; to prohibit, prevent and punish, by fine and imprisonment, the imposition of quacks and other medical pretenders; to establish hospitals and infirmaries, and make regulations to secure the general health of the inhabitants; to declare what shall be nuisances and prevent and remove the same.

SEC. 26. To provide the city with water; to dig wells, lay pump logs and pipes and erect pumps in the streets for the extinguishment of fires and the convenience of the inhabitants.

SEC. 27. To direct or prohibit the location and management of houses for the storing of gunpowder, tar, pitch, resin or other combustible and dangerous materials within the city, and to regulate the conveying of gunpowder.

SEC. 28. To exclusively control, regulate, repair, amend and clear the streets, alleys, bridges, sidewalks or crosswalks, and open, widen, straighten or vacate streets and alleys, and put drains or ditches and sewers therein, and prevent the incumbering of the streets in any manner, and protect the same from any encroachment and injury.

SEC. 29. To provide for the lighting of the streets and erecting lamp posts; to erect market houses and establish markets and market places, and to provide for the government and regulation thereof.

SEC. 30. To provide for the erection of all needful buildings for the use of the city, and for enclosing, improving and regulating all public grounds belonging to the city.

SEC. 31. To license, regulate, prohibit or restrain the manufacturers, sellers or vendors of spirituous or fermented liquors, tavern keepers, dram, or tippling shop keepers, boarding, victualing or coffee houses, restaurants, saloons, or other houses or places for the selling or giving away of wines or other liquors, whether ardent, vinous or fermented.

SEC. 32. To license, tax and regulate auctioneers, merchants, retailers, grocers, ordinaries, hawkers, peddlers, brokers, pawnbrokers and money changers.

SEC. 33. To regulate the selling or giving away of any ardent spirits or other intoxicating liquors by any shopkeeper, grocer or trader, to be drank in any shop, store, grocery, outhouse, yard, garden, or other place within the city, except by persons or at places duly licensed; to forbid the selling or giving away of ardent spirits or other intoxicating liquors to any child, apprentice or servant, without the consent of his or her parent, guardian, master or mistress, or to any Indian.

SEC. 34. To regulate and license or prohibit butchers, and to revoke their license for malconduct in the course of trade, and to regulate, license and restrain the sale of fresh meat and vegetables in the city.

SEC. 35. To license, tax, regulate, suppress or prohibit billiard tables, pin alleys, nine or ten pin alleys, or table and ball alleys; to suppress or restrain all disorderly houses and groceries; to authorize the destruction and demolition of instruments and devices used for the purpose of gaming, and all kinds of gambling; to prevent any riot, noise, disturbance, or disorderly assemblage; and to retain and punish vagrants, mendicants, street beggars and prostitutes.

SEC. 36. To regulate, suppress or prohibit all exhibitions of common showmen, shows of every kind, concerts or other musical entertainments, exhibitions of natural or artificial curiosities, caravans, circuses, theatrical performances, ball rooms and all other exhibitions and amusements.

SEC. 37. To license, tax and regulate hacking, carriages, wagons, carts and drays, and fix the rates to be charged for the carriage of persons and for wagonage, cartage and drayage of property; as also to license and regulate porters and fix the rate of porterage.

SEC. 38. To provide for the prevention and extinguishment of fires, to regulate the fixing of chimneys and flues thereof and stove pipes; and to organize and establish fire companies.

SEC. 39. To regulate and order parapet walls and other partition fences.

SEC. 40. To establish standard weights and measures, and regulate the weights and measures to be used in the city, in all cases not provided for by law.

SEC. 41. To provide for the inspecting and measuring of lumber and other building materials, and for the measurement of all kinds of mechanical work.

SEC. 42. To provide for the inspection and weighing of hay, lime and stone coal, and the measuring of charcoal, firewood and other fuel to be sold or used within the city.

SEC. 43. To provide for and regulate the inspection of tobacco, beef, pork, flour and meal, also beer, whisky and brandy, and all other spirituous or fermented liquors.

SEC. 44. To regulate the weight and quality of bread sold and used in the city.

SEC. 45. The city council shall have exclusive power within the city, by ordinance, to license, regulate or restrain the keeping of ferries and toll bridges.

SEC. 46. To provide for taking the enumeration of the inhabitants of the city; to regulate the burial of the dead, and registration of births and deaths; to direct the returning and keeping of bills of mortality, and to impose penalties on physicians, sextons and others for any default in the premises.

SEC. 47. To prevent horse racing, immoderate riding or driving in the streets, and to authorize their being stopped by any person; to punish or prohibit the abuse of animals; to provide for the putting up of posts in the front of city lots to which to fasten horses and other animals; to compel the fastening of horses, mules, oxen or other animals attached to vehicles, whilst standing or remaining in the streets.

SEC. 48. To prevent the incumbering of the streets or sidewalks, lanes, alleys or public grounds with carriages, tents, wagons, carts, sleighs, horses or other animals, sleds, wheelbarrows, boxes, lumber, timber, firewood, posts, awnings, signs, adobies or any material or substance whatever.

SEC. 49. To restrain, regulate or prohibit the running at large of cattle, horses, mules, sheep, swine, goats and all kinds of poultry; and to tax, prevent or regulate the keeping of dogs, and to authorize the destruction of the same when at large contrary to city ordinance.

SEC. 50. To compel the owner or occupant of any grocery, cellar, tallow chandler shop, soap factory, tannery, stable, barn, privy, sewer, or any unwholesome place to cleanse, remove or abate the same from time to time, as often as may be necessary for the health, comfort and convenience of the inhabitants of said city.

SEC. 51. To direct the location and management of and regulate breweries and tanneries; and to direct the location, management and construction of and restrain or prohibit within the city, distilleries, slaughtering establishments and all establishments or places where nauseous, offensive or unwholesome business may be carried on.

SEC. 52. To prevent any person from bringing, depositing or having within the limits of the city any dead carcass or any unwholesome substance, and to require the removal or destruction of the same by any person who shall have placed or caused to be placed upon or near his premises or near any of the streams of this city any such substance, or any putrid or unsound beef, pork, or fish, hides or skins of any kind; and, on his default, to authorize the removal or destruction of the same by any officer of said city.

SEC. 53. To direct and regulate the planting and preserving trees in the streets and public grounds; and regulate the fencing of lots within the boundaries of the city.

SEC. 54. To prevent the ringing of bells, the blowing of horns and bugles, the crying of goods and all other noises, performances and devices tending to disturb the peace and quiet of the city.

SEC. 55. To grant and issue licenses, and direct the manner of issuing and registering thereof. Bonds may be taken on the granting of licenses, for the due observance of the ordinances of the city council.

SEC. 56. To require every merchant, retailer, trader and dealer in merchandise or property of every description, which is sold by measure or weight, to cause their weights and measures to be sealed by the city sealer, and to be subject to his inspection; the standard of which weights and measures shall be conformable to those established by law.

SEC. 57. The city council shall have power to make such ordinances and resolutions, not contrary to nor conflicting with the Constitution and laws of the United States and the laws of this Territory, as may be necessary and expedient to carry into effect the powers vested in the city council or any officer of said city by this act; and enforce observance of all ordinances and resolutions made in pursuance of this act, by penalties not exceeding one hundred dollars, or imprisonment not to exceed six months, or both.

SEC. 58. The city council shall have exclusive authority and power to establish and regulate the police of the city; to impose fines, forfeitures and penalties for the breach of any ordinance; to provide for the recovery of such fines and forfeitures and the enforcement of such penalties, and to pass, make, ordain, establish and execute all such ordinances, not repugnant to the Constitution and laws of the United States or the laws of this Territory, as they may deem necessary for carrying into effect and execution the powers specified in this act, and for the peace, good order, regulation, convenience and cleanliness of the city, for the protection of property therein from destruction by fire or otherwise, and for the health, safety and happiness of the inhabitants thereof.

SEC. 59. To provide for the punishment of offenders and vagrants by imprisonment in the county or city jail, or by compelling them to labor on the streets or other public works until the same shall be fully paid, in all cases where such offenders or vagrants shall fail or refuse to pay the fines and ferfeitures which may be awarded against them.

SEC. 60. All ordinances passed by the city council shall, within one month after they have been passed, be published in some newspaper printed in said city, or certified copies thereof be posted up in three of the most public places in said city.

SEC. 61. All ordinances of the city may be proven by the seal of the corporation; and, when printed or published in book form, purporting to be printed or published by authority of the city council, the same shall be received in evidence in all courts or places without further proof.

SEC. 62. When it shall be necessary to take private property for opening, widening or altering any public street, lane, avenue or alley, the corporation shall make a just compensation therefor to the person whose property is so taken; and if the amount of such compensation cannot be agreed upon, a justice of the peace shall cause the same to be ascertained by a jury of six disinterested men, who shall be inhabitants of the city.

SEC. 63. All jurors, impaneled to inquire into the amount of benefit or damage, that shall happen to the owners of property so proposed to be taken, shall first be sworn to that effect; and shall return to the mayor or presiding officer of the city council their inquest in writing, signed by each juror.

SEC. 64. All officers of the city, created conservators of the peace by this act, shall have power to arrest or cause to be arrested, with or without process, all persons who shall break the peace, commit for examination and, if necessary, detain such persons in custody, not exceeding forty-eight hours, in the city prison or other safe place; and shall have and exercise such other powers, as conservators of the peace, as the city council may prescribe.

SEC. 65. The city council shall cause to be published in some newspaper published in Grantsville city, or posted up in three public places, on or before the first day of December in each year, a statement of the amount of the city revenue, specifying in said statement whence derived and for what disbursed.

II. TOOELE.

An Act to incorporate Tooele city, in Tooele county.

[*Approved January* 13, 1853.]

SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That all that portion of country situated within the following boundaries, to wit: Beginning at a point half a mile south-east of the mouth of Big creek, known also as Settlement cañon; thence running due west three miles; thence north three miles; thence east three miles; thence south three miles, to the place of beginning, shall be known and designated by the name of Tooele city; and the inhabitants thereof are hereby constituted a body corporate and politic, by the name aforesaid; and shall have perpetual succession, and may have and use a common seal, which they may change and alter at pleasure.

SEC. 2. The inhabitants of said city, by the name and style aforesaid, shall have power to sue and be sued, to plead and be impleaded, defend and be defended in all courts of law and equity and in all actions whatsoever; to purchase, receive and hold property, real and personal, in said city; to purchase, receive and hold real property beyond the city for burying grounds or other public purposes, for the use of the inhabitants of said city; to sell, lease, convey or dispose of property, real and personal, for the benefit of said city; to improve and protect such property, and to do all other things in relation thereto, as natural persons.

SEC. 3. There shall be a city council to consist of a mayor, two aldermen and three councilors, who shall have the qualifications of electors of said city, and shall be chosen by the qualified voters thereof, and shall hold their offices for two years, and until their successors shall be elected and qualified. The city council shall judge of the qualifications, elections and returns of their own members, and a majority of them shall form a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members, under such penalties as may be prescribed by ordinance.

SEC. 4. The mayor, aldermen and councilors, before entering on the duties of their offices, shall take and subscribe an oath or affirmation that they will support the Constitution of the United States and the laws of this Territory, and that they will well and truly perform all the duties of their offices, to the best of their skill and abilities.

SEC. 5. On the first Monday of August next, and every two years thereafter, on said day, an election shall be held for the election of a mayor, two aldermen and three councilors; and at the first election under this act, two judges shall be chosen, *viva voce*, by the electors present. The said judges shall choose one clerk; and the judges and clerk, before entering upon their duties, shall take and subscribe an oath or affirmation, such as is now required by law to be taken by judges and clerks of other elections; and at all subsequent elections the necessary number of judges and clerks shall be appointed by the city council. At the first election so held, the polls shall be opened at nine o'clock a. m., and closed at six o'clock p. m. At the close of the polls the votes shall be counted, and a statement thereof proclaimed at the front door of the house at which said election shall be held; and the clerks shall leave with each person elected, or at his usual place of residence, within five days after the election, a written notice of his election, and each person so notified, shall within ten days after the election, take the oath or affirmation hereinbefore mentioned; a certificate of which oath shall be deposited with the recorder, whose appointment is hereinafter provided for, and be by him preserved; and all subsequent elections shall be held, conducted, and returns thereof made, as may be provided for by ordinance of the city council.

SEC. 6. All inhabitants who are of the age of twenty-one years, who are entitled to vote for Territorial officers and who shall be actual residents of said city sixty days next preceding said election, shall be entitled to vote for city officers.

SEC. 7. The city council shall have authority to levy and collect taxes, for city purposes, upon all taxable property, real and personal, within the limits of the city, not exceeding one-half [of one] per cent. per annum upon the assessed value thereof; and may enforce the payment of the same in any manner to be provided by ordinance, not repugnant to the Constitution of the United States or the laws of this Territory.

SEC. 8. The city council shall have power to appoint a recorder, treasurer, assessor and collector, marshal and supervisor of streets. They shall also have the power to appoint all such other officers, by ordinance, as may be necessary, define the duties of all city officers and remove them from office at pleasure.

SEC. 9. The city council shall have power to require of all officers, appointed in pursuance of this act, bonds with penalty and security for the faithful performance of their respective duties, such as may be deemed expedient, and also to require of all officers, appointed as aforesaid, to take an oath for the faithful performance of the duties of their respective offices.

SEC. 10. The city council shall have power and authority to make, ordain, establish and execute all such ordinances, not repugnant to the Constitution of the United States or the laws of this Territory, as they may deem necessary for the peace, benefit, good order, regulation, convenience and cleanliness of said city; for the protection of property therein from destruction by fire or otherwise, and for the health and happiness thereof. They shall have power to fill all vacancies, that may happen by death, resignation or removal, in any of the offices herein made elective; to fix and establish all the fees of the officers of said corporation, not herein established; to impose such fines, not exceeding one hundred dollars for each offense, as they may deem just, for refusing to accept of any office in or under the corporation, or for misconduct therein, to divide the city into wards and specify the boundaries thereof.

SEC. 11. All ordinances passed by the city council shall, within one month after they shall have been passed, be published in some newspaper printed in said city, or certified copies thereof, be posted up in three of the most public places in the city.

SEC. 12. All ordinances of the city may be proven by the seal of the corporation; and when printed or published in book or pamphlet form, purporting to be printed or published by the authority of the corporation, the same shall be received in evidence in all courts and places, without further proof.

SEC. 13. The mayor and aldermen shall be conservators of the peace within the limits of the city, and shall have all the powers of justices of the peace therein, both in civil and criminal cases arising under the laws of the Territory. They shall, as justices of the peace, within the limits of said city, perform the same duties, be governed by the same laws, give the same bonds and securities as other justices of the peace and be commissioned as other justices of the peace in and for said city, by the governor.

SEC. 14. The mayor and aldermen shall have exclusive jurisdiction in all cases arising under the ordinances of the corporation, and shall issue such process as may be necessary to carry said ordinances into execution and effect. Appeals may be had from any decision or judgment of said mayor or aldermen, arising under the ordinances of said city, in the same manner as appeals are taken from justices of the peace.

SEC. 15. To license, regulate, prohibit or restrain the manufacturing, selling or giving away of spirituous, vinous or fermented liquors, [to license and regulate] tavern keepers, dram or tippling shop keepers, boarding, victualing or coffee houses, restaurants, saloons or other houses or places for the selling or giving away of ardent, vinous or fermented liquors.

SEC. 16. To restrain, regulate or prohibit the running at large of cattle, horses, mules, sheep, swine, goats and all kinds of poultry; and to tax and regulate the keeping of dogs and to authorize the destruction of the same when at large contrary to city ordinance.

CHAPTER XIV.

OF COALVILLE CITY INCORPORATION.

An Act incorporating the city of Coalville, in Summit county.

[*Approved January* 16, 1867.]

SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That all that district of country embraced in the following boundaries, in Summit county, to wit: Commencing at the Wasatch coal bed, thence running east two miles, thence north two miles, thence west four miles, thence south five miles, thence east four miles, thence north three miles till it intersects the line running east from the place of beginning, shall be known and designated under the name and style of Coalville city; and the inhabitants thereof are hereby constituted a body corporate and politic by the name aforesaid, and shall have perpetual succession, and may have and use a common seal which they may change and alter at pleasure. (1)

SEC. 2. The inhabitants of said city, by the name and style aforesaid, shall have power to sue and be sued, to plead and be impleaded, defend and be defended in all courts of law and equity and in all actions whatsoever; to purchase, receive and hold property real and personal in said city; to purchase, receive and hold real property beyond the city for burying grounds or other public purposes for the use of the inhabitants of said city; to sell, lease, convey or dispose of property, real and personal, for the benefit of said city; to improve and protect such property, and to do all other things in relation thereto as natural persons.

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(1) As amended Feb. 3, 1868.

SEC. 3. There shall be a city council to consist of a mayor and five councilors, who shall have the qualifications of electors of said city, and shall be chosen by the qualified voters thereof, and shall hold their offices for two years and until their successors shall be elected and qualified. The city council shall judge of the qualifications, elections and returns of their own members, and a majority of them shall form a quorum to do business; but a smaller number may adjourn from day to day and compel the attendance of absent members, under such penalties as may be prescribed by ordinance; there shall also be elected in like manner two justices of the peace who shall have the qualifications of voters, be commissioned by the governor, and have jurisdiction in all cases arising under the ordinances of the city.

SEC. 4. The mayor and councilors, before entering upon the duties of their offices shall take and subscribe an oath or affirmation that they will support the Constitution of the United States and the laws of this Territory, and that they will well and truly perform the duties of their offices to the best of their skill and abilities.

SEC. 5. One mayor and five councilors shall be elected biennially, and the first election under this act shall be at such time and place, as the probate judge of Summit county shall direct: *Provided*, said election shall be on or before the first Monday in August next. Said election shall be held and conducted as now is provided by law for the holding of elections for county and Territorial officers; and at the said first election all electors within said city limits shall be entitled to vote.

SEC. 6. The clerks of election shall leave with each person elected, or at his usual place of residence, within five days after the election, a written notice of his election; and each person so notified shall, within ten days after the election, take the oath or affirmation hereinbefore mentioned, a certificate of which oath shall be deposited with the recorder, whose appointment is hereinafter provided for, and be by him preserved; and all subsequent elections shall be held, conducted and returns thereof made as may be provided for by ordinance of the city council.

SEC. 7. The city council shall have authority to levy and collect taxes, for city purposes, upon all taxable property, real and personal within the limits of the city, not exceeding one-half of one per cent. per annum upon the assessed value thereof; and may enforce the payment of the same to be provided for by ordinance, not repugnant to the Constitution of the United States or the laws of this Territory.

SEC. 8. The city council shall have power to appoint a recorder, treasurer assessor and collector, marshal and supervisor of streets. They shall also have the power to appoint all such other officers, by ordinance, as may be necessary, define the duties of all city officers and remove them from office at pleasure.

SEC. 9. The city council shall have power to require of all officers, appointed in pursuance of this act, bonds with security for the faithful performance of their respective duties, and also to require of all officers, appointed as aforesaid, to take an oath for the faithful performance of the duties of their respective offices.

SEC. 10. The city council shall have power and authority to make, ordain, establish and execute all such ordinances, not repugnant to the Constitution of the United States or the laws of this Territory, as they may deem necessary for the peace, benefit, good order, regulation, convenience and cleanliness of said city; for the protection of property therein from destruction by fire or otherwise, and for the benefit and happiness of the inhabitants thereof; and shall have control of the water and water courses leading to the city: *Provided*, that such control shall not be exercised to the injury of any rights already acquired by actual settlers; and shall have control of the water courses and mill privileges within said city, but in no case shall they interfere with the natural rights of others heretofore acquired in relation to water. They shall have power to fill all vacancies that may happen by death, resignation, removal, or otherwise, of any of the officers herein made elective; to fix and establish the fees of the officers of said corporation. The city council shall have power to divide the city into wards and specify the boundaries thereof.

SEC. 11. The city council shall have exclusive power within the city, by ordinance, to license, regulate or restrain the keeping of ferries or toll bridges.

SEC. 12. All ordinances passed by the city council shall, within ten days after they shall have been passed, be published in some newspaper printed in said city, or certified copies thereof be posted up in three of the most public places in the city. They shall not be in force until thus published or posted up.

SEC. 13. All ordinances of the city may be proven by the seal of [the] corporation affixed thereto; and, when printed or published in book or pamphlet form, purporting to be printed or published by the authority of the corporation, the same shall be received in evidence in all courts and places, without further proof.

SEC. 14. The justices of the peace of said city shall have all the powers of other justices of the peace, both in civil and criminal cases arising under the laws of the Territory; they shall perform the same duties, be governed by the same laws, give the same bonds and securities as other justices of the peace; they shall have exclusive jurisdiction in all cases arising under the ordinances of the corporation, and shall issue such process as may be necessary to carry such ordinances into execution. Appeals may be had from any decision or judgment of said justices, arising under the ordinances of said city or the laws of the Territory, in the same manner as appeals are or may be taken from other justices of the peace.

SEC. 15. The mayor shall be the chief executive officer of said corporation; he shall preside in the city council, and shall have power to veto any ordinance when not passed by four-fifths majority; and it shall be his duty to sign all city ordinances.

SEC. 16. The city council shall have power to restrain, regulate or prohibit the running at large of cattle, horses, mules, sheep, swine, goats and all kinds of poultry; and to tax and regulate the keeping of dogs, and to authorize the destruction of the same when at large contrary to city ordinance.

SEC. 17. To license, regulate, prohibit or restrain the manufacturing, selling or giving away of spirituous, vinous or fermented liquors; [to license and regulate] tavern keepers, dram or tippling shop keepers, boarding, victualing or coffee houses, restaurants, saloons or other houses or places for the selling or giving away of ardent, vinous or fermented liquors.

SEC. 18. The city council shall have exclusive power by ordinance to regulate the police of the city; to license, tax and regulate auctioneers, merchants and retailers; to license, tax and regulate theatrical and other exhibitions, shows and amusements; to tax, restrain, prohibit and suppress gaming, bawdy and other disorderly houses.

SEC. 19. This act shall be in force on or after the 10th day of February, 1867, and may be amended or repealed at the pleasure of the Legislative Assembly.

CHAPTER XV.

OF MORGAN CITY INCORPORATION.

An Act incorporating the city of Morgan, in Morgan county.

[*Approved February* 13, 1868.]

SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That all that district of country embraced in the following boundaries in Morgan county, to wit: Commencing at the bridge on the county road crossing East Cañon creek, thence down said creek one mile, thence north-east two miles and a half, thence skirting the base of the mountains in a south-easterly direction to where Weber river enters Weber valley, thence skirting the base of the mountains on the south side of said Weber river two and a half miles, more or less, to the north-east corner of Bradt survey, thence west three-fourths of a mile to Cañon creek, thence down said Cañon creek one-half mile, more or less, to place of beginning, shall be known and designated under the name and style of Morgan city; and the inhabitants thereof are hereby constituted a body corporate and politic by the name aforesaid, and shall have perpetual succession, and may have and use a common seal, which they may change and alter at pleasure.

SEC. 2. The inhabitants of said city, by the name and style aforesaid, shall have power to sue and be sued, to plead and be impleaded, defend and be defended in all courts of law and equity and in all actions whatsoever; to purchase, receive and hold property real and personal in said city; to purchase, receive and hold real property beyond the city for burying grounds or other public purposes for the use of the inhabitants of said city; to sell, lease, convey or dispose of property, real and personal, for the benefit of said city; to improve and protect such property, and to do all other things in relation thereto as natural persons.

SEC. 3. There shall be a city council to consist of a mayor and five councilors, who shall have the qualifications of electors of said city, and shall be chosen by the qualified voters thereof, and shall hold their office for two years and until their successors shall be elected and qualified. The city council shall judge of the qualifications, elections and returns of their own members, and a majority of them shall form a quorum to do business; but a smaller number may adjourn from day to day and compel the attendance of absent members, under such penalties as may be prescribed by ordinance; there shall also be elected in like manner two justices of the peace who shall have the qualifications of voters, be commissioned by the governor, and have jurisdiction in all cases arising under the ordinances of the city.

SEC. 4. The mayor and councilors, before entering upon the duties of their offices shall take and subscribe an oath or affirmation that they will support the Constitution of the United States and the laws of this Territory, and that they will well and truly perform the duties of their offices to the best of their skill and abilities.

SEC. 5. One mayor and five councilors shall be elected biennially, and the first election under this act shall be at such time in said city as the probate judge of Morgan county shall direct: *Provided*, said election shall be on or before the first Monday in August next. Said election shall be held and conducted as now is provided by law for the holding of elections for county and Territorial officers; and at the said first election all electors within said city limits shall be entitled to vote.

SEC. 6. The clerks of election shall leave with each person elected, or at his usual place of residence, within five days after the election, a written notice of his election; and each person so notified shall, within ten days after the election, take the oath or affirmation hereinbefore mentioned, a certificate of which oath shall be deposited with the recorder, whose appointment is hereinafter provided for, and be by him preserved; and all subsequent elections shall be held, conducted and returns thereof made as may be provided for by ordinance of the city council.

SEC. 7. The city council shall have authority to levy and collect taxes, for city purposes, upon all taxable property real and personal within the limits of the city, not exceeding one-half of one per cent. per annum upon the assessed value thereof; and may enforce the payment of the same to be provided for by ordinance, not repugnant to the Constitution of the United States or to the laws of this Territory.

SEC. 8. The city council shall have power to appoint a recorder, treasurer, assessor and collector, marshal and supervisor of streets. They shall also have the power to appoint all such other officers, by ordinance, as may be necessary, define the duties of all city officers and remove them from office at pleasure.

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SEC. 17. The city council shall have exclusive power by ordinance to regulate the police of the city; to license, tax and regulate auctioneers, merchants, and retailers; to license, tax and regulate theatrical and other exhibitions, shows and amusements; to prohibit and suppress gaming, bawdy and other disorderly houses.

SEC. 18. This act shall be in force on and after the first day of April, 1868, and may be amended or repealed at the pleasure of the Legislative Assembly.

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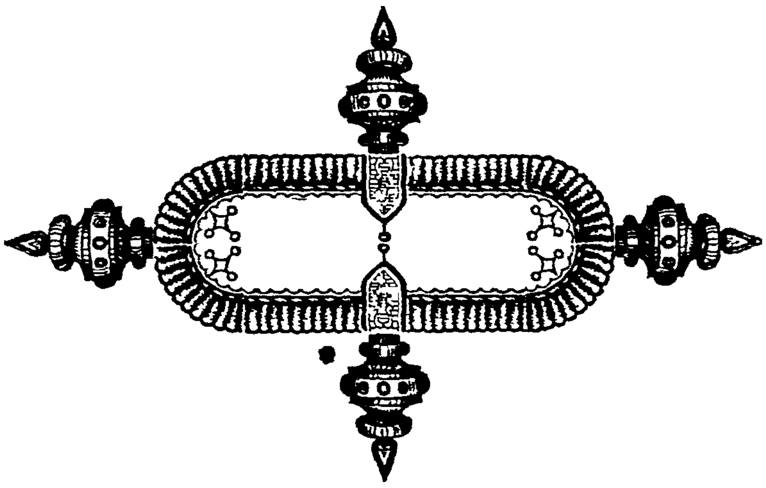

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